



THE INDIAN CANDIDATE  
AND  
RETURNING OFFICER





Lithographed by Charles Jones, 40, Strand.

1778  
1878

# Taxes

upon every article which enters into the mouth, or covers the back, or is placed under the foot,

## TAXES

upon every thing which is pleasant to see, hear, feel, smell, and taste

## TAXES

UPON WARMTH, LIGHT, AND LOCOMOTION;

## TAXES

on every thing on earth and the waters under the earth, on every thing that stirs, grows, or is grown at home

## TAXES

on the raw material;

## TAXES

on every value that is added to it by the industry of man

## TAXES

on the  
on the

Ermine which decorates the Judge, and the Rope which hangs the Criminal,

## TAXES

on the  
on the

at  
BED or at BOARD, COUCHANT or LEVANT.

# WE MUST PAY.

The School Boy whips his Taxed Top,

The headship, with manacles his Taxed horse with a Taxed bridle or a Taxed lead,

and he dips his finger in a spoon which has paid 50 PER CENT.

7 PER CENT. into a spoon which has paid 50 PER CENT.

throws himself back upon his chaise Bed which has paid

22 per Cent. makes his will;

and expires in the arms of an apothecary who has paid 100 per cent for the privilege of putting him to death

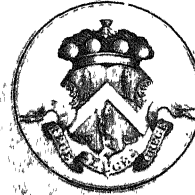
His whole property is then Taxed from 2 to 10 per cent.

Besides the purchase, large price is demanded for buying him in the chariot of putting him to death

TAXED MARBLE;

and he is then gathered to his fathers to be Taxed

# no more.



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# THE INDIAN CANDIDATE

## AND

# RETURNING OFFICER

### A MANUAL

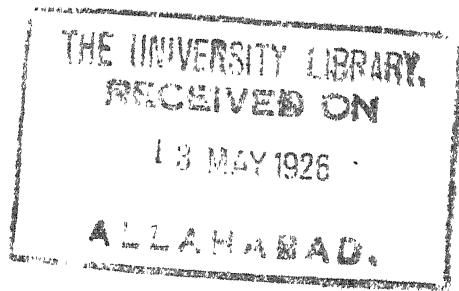
Giving the law and procedure of elections in  
British India and Burma

BY

E. L. L. HAMMOND, I.C.S., C.B.E.

WITH A FOREWORD BY THE

RIGHT HON. E. S. MONTAGU



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‘I take my stand upon the broad principle that the enfranchisement of capable citizens, be they few or be they many—and if they be many so much the better—is an addition to the strength of the State. The strength of the modern State lies in its representative system.’

*The Right Honourable Mr. W. E. Gladstone in the House of  
Commons, 29th February 1884.*

‘We can best fulfil our task and discharge our responsibility by helping you to develop the new system into a working proposition. It is a novelty in constitutions and none of us can prophesy the manner of its growth. But there are to our minds certain universal tests of administrative machinery: its smoothness or friction in working, its burdensomeness on the people or the reverse, its educative value, and its capacity for future development. . . . But we must trust to perfect our work in co-operation with Indian public men, and we must be content to believe that we have laid our foundations well and that they will bear the new superstructure.’

*Dispatch No. 1 of 1919 from the Government of India  
to the Secretary of State.*

## FOREWORD

I WELCOME the opportunity to commend a popular and practical exposition of the law and procedure governing elections in India for several reasons. Nobody knows better than those who were responsible for shaping the new Constitution in India how much laborious work in the preparation of rules, regulations, electoral laws and machinery was involved for the members of the Indian Civil Service. They played an indispensable part in securing, within the necessary time, the successful completion of this work, and the essential part which was thus played passed almost unnoticed in the smooth manner in which the new Parliaments of India came to be elected. That one of their number should have published two books to assist Indian candidates and electors by preparing handbooks which would enable them easily to grasp the complications of electoral law, shows a willingness to help which in itself merits the gratitude of those concerned with Indian elections, and I feel confident that the present volume will be of great assistance at the coming elections.

No man or woman can prophesy what form of Constitution, what methods of representation will ultimately be devised for the groups of countries in the great continent of India winning nationality in the British Commonwealth. It is surely uncontroversial to predict that the ultimate and permanent form of Government machinery must be devised by Indians in India, and will be designed to meet the particular characteristics and genius of the Indian peoples. It is also not too much to say that it would be rash to assert confidently that even for British needs the last and completest result of political science has been devised in the present condition of our ever-changing Constitution. But whatever the future may have in store, it would seem to me that the right of Indian politicians and statesmen to secure the growth of and to formulate India's Constitution must depend on their acquiring the character of real representatives of a growing electorate, and for this purpose it is essential that they and those who elect them should gradually grasp the details of the temporary Constitution given to them by the British Parliament and those who have acted on behalf of Parliament. Let it be remembered also that the method of election of the popular representatives, the means employed by them to obtain votes, will, equally with the discharge of their responsible duties when elected, be carefully scrutinized by Parliament in deciding how to adopt or modify the Constitution of India. Mr. Hammond has helped to show what can be done and what cannot be done, and has put it all in a most readable form. The book is obviously written by one who is

determined to do his best and to grasp every opportunity of helping those who would do their best in the working of the new order of things. Lastly I would like to emphasize two points mentioned in this book. On pages 10 and 117 Mr. Hammond alludes to the need for mutual assistance and co-operation. During this period of transition, when bureaucracy is giving way gradually to self-government, the politician can and should obtain invaluable help from those who have done so much for India in the past.

The honest education of the electorate is a matter of primary importance (p. 43). May one who takes an anxious interest in India's future echo the appeal that there should be no appeal to racial or religious prejudices, and express the hope that, in the turmoil of an election, the great charm of Indian courtesy may not disappear? To obtain from this system of popular government the best that the West can give, to exclude any undesirable features that have attended its growth in the United Kingdom and elsewhere, and to retain for India all that is good in her own political heritage, that, it seems to me, is the task of those who wish to adapt any English system to Indian use. This book should help to ensure this.

EDWIN S. MONTAGU.

## PREFACE

IN 1920 the Pioneer Press, Allahabad, published a book called *Indian Electioneering*. As was the case with the Election Rules, Regulations, and Executive Instructions issued in that year, it was written hurriedly, mainly as an attempt to introduce the Indian Candidate and Elector to the new democratic form of Government.

The revision and amendment of the Rules and Regulations would in any event have rendered a second edition necessary. It is, however, more desirable to issue a fresh book, based in part on the experience derived from India's first General Election, to be a practical guide to Candidates, Election and Polling Agents, Canvassers, Returning and Presiding Officers, and in fact to all concerned with elections to the various Indian Legislatures.

Much that seemed necessary in 1920 can be omitted in 1923 : a good deal of new material has been added, naturally, to the chapters dealing with the duties of Returning and Presiding Officers, the organization of a constituency, and the responsibility of a Candidate or his Election Agent. The author is indebted to the courtesy of the Pioneer Press for the retention of a good deal of his earlier book.

A word of caution is necessary. First, it is possible that the numbering of the rules given in Appendix I may not correspond exactly with that finally adopted by the Government of India, for which final proofs had to be passed before receipt of the latest edition of the rules. Secondly, in the case of the Regulations, it will be seen that these are made by local Governments. They are not, therefore, uniform for all provinces, and any candidate or returning officer should obtain a copy of the Regulations issued by the local Government with which he is concerned. Blank pages have been left after Appendix I for the purpose of necessary addition and correction.

The author would gratefully welcome any suggestions from Officers concerned with elections or from Candidates or Election Agents regarding any difficulties which they may experience, and

in respect of which no solution is offered in this book. It is obvious that in India problems must arise quite different to those usually met with in elections in the United Kingdom. Some of these difficulties cannot be removed, as, for example, the size of the constituencies, or the distance between polling stations. But they fade into insignificance before, though they serve to accentuate, the Candidate's greatest difficulty—the education of the Indian Electorate. In one of the following chapters a system is suggested which may help the Candidate to reach his constituents.

The quotations from English text-books, both as regards the law of elections and the duties of an Election Agent in organizing his campaign are perhaps more numerous than would be proper in a book designed for use in the United Kingdom. The introduction of English electoral procedure into India is the obvious, and I hope, adequate excuse for copious extracts from the authorities in the country of origin.

It remains for me to acknowledge the assistance I have received and the advice given by those with whom it has been my privilege to discuss the Indian Electoral Rules and Regulations.

I wish also to add a personal word of thanks to Sir William Vincent and Mr. V. Dawson of the India Office. To the former's kindly encouragement this book is partly due: the latter was good enough to advise me of the latest alterations and amendments.

E. L. L. H.

ST. MARGARET'S BAY,  
KENT,

*20th July, 1923.*

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## CHAPTER I

### INTRODUCTORY

THERE are five sources for Indian election law and procedure.

1. *The Indian Electoral Rules* made, with the sanction of the Secretary of State, under the Government of India Act.

2. *The Regulations* made by local Governments under the above rules. (Vide rules IX and XV.)

3. *Orders of the Governor-General*, or Governor, the Governor-General in Council or local Government made either in accordance with specified powers conferred by the Electoral Rules, as for example in rule XX, or as executive orders. Such executive orders do not, of course, have the force of law. (Vide the *East Punjab Case, Indian Election Petitions*, vol. i, p. 158.) In one of the circulars of instructions issued by a local Government at the last general election, it was stated that a returning officer might be held personally liable for mistakes. This executive instruction was held to be wrong in a case heard by the election Commissioners in another province. (*Rohtak*, 1, I. E. P., 193.) It is, however, desirable that except where such orders are confidential or are not intended for publication the candidate or election agent should obtain a copy of the same.

4. *Case law in India*. As a result of the first general election held in India twenty-one election petitions were heard, in which the principles of Indian law were discussed. As in England, so in India, in course of time it will probably be found that the best guide for an election agent as to election law will be found in these reported cases.

5. *English case law*. Any election agent who wishes to acquire an intimate knowledge of the principles which underlie the law of elections in British India would do well to peruse the six volumes of O'Malley and Hardcastle's *Reports of Election Petitions in the United Kingdom*. In the *Lahore* case (1, I. E. P., 141) it is stated :

'It may be true that Indian Election Law is based on English Election Statutes, but it differs from English Law widely in numerous particulars and should be regarded as a separate *corpus*, the Indian Legislators having adopted some and discarded others of the English Election provisions. It seems to us that the Indian Legislature intended to make their statutory provisions complete in themselves, and there is nothing whatever to indicate that there was any intention that the Indian Courts should administer English Common Law provisions. This is quite a different thing to saying—and this is certainly a proposition for which there is authority—that, in default of any provision in the Statute Law, the Indian Courts may fall back on the principles of English Common Law.

Principles are entirely different in essence to specific provisions and the English Common Law principles are only adopted, as we understand the law, in this country, because they are considered to represent the principles of justice, equity and good conscience, upon which the law, as a whole, is to be administered. But these principles even can only be utilized where no statutory provision exists, and in the present case, we have no doubt that such provision does exist. English Statute Law only contemplates the avoidance of an election by reason of the acts of a candidate or his agents, and there is no rule of English Statute Law corresponding to that contained in rule 1 of part II of schedule IV of the Punjab Electoral Rules, which makes it possible to avoid an election on the ground of the action of persons unconnected with the candidates or their agents, provided always that the result of the election has been materially affected thereby (Punjab Electoral Rule 42 (1) (a)). It seems to us that there exists so clear a provision in the Indian Law enabling us to deal with the facts of this case that the question of the application of English Common Law need not be further considered, but we may add one further observation. Even if English Common Law were to be applied, it is only established by it that, on the one hand, if general intimidation has been of such a general character that it *may* have affected the result of election, then the election is void (*North Durham* case 2, O.M. & H., 156), that, on the other hand, even where there was an organized system of intimidation, if it were proved that it was practised not by persons acting in the interest of the respondent but against him and in the interest of the other candidate, the election would not be avoided (*Sligo* case 1, O.M. & H., 300).'

As regards these various sources the Indian Electoral Rules have recently been revised, and the main difference as compared with the original publication in 1920 will be found in, first, the procedure at nomination, secondly, the law as regards the return of election expenses, and thirdly, the procedure connected with the presentation of an election petition. These changes involved revision of the regulations, which may or may not be identical for all local Governments.

Any detailed instructions with regard to registration would be beyond the scope of this work, though allusion is made to the duties of the registering and revising officer in connexion with the organization of a constituency.

Technicalities of registration law differ from Province to Province, but as an essential of political organization it is necessary to recognize that it is as important to get the names of all supporters on the electoral rolls as to see that these supporters vote when the day of election arrives. In *Elections and how to fight them*, by Mr. J. Seymour Lloyd, which is a useful and practical guide for candidates and workers at municipal elections, the following advice as to registration is given :

‘ Every member should regard himself as a recruiting sergeant for his party. In many boroughs every street has its “ captain ”, who is responsible for looking after the politics of his neighbours, and in small towns and in villages a great deal of useful work may be done in the same direction by securing the active services of one or two keen

supporters of the party, who will act as village sentinels, and stimulate local interest in political questions of the day by their personal influence. There are several methods of procedure which may be adopted in counties, but it may not be out of place here to mention a system which has been proved to work well in a large rural division, where organization has been brought to a high state of efficiency. Notices are sent out to the chairman or secretary in each parish for a registration meeting, at which he is requested to invite all members of the party to attend. The agent also is present with the register of the district, and this is carefully gone through, name by name. Removals and lost qualifications are noted, while particulars are taken in order that newly-qualified members of the party may come upon the register immediately they are entitled to be enrolled. Inquiries should also be directed to ascertain, on the basis of the rateable property in the district, that all occupiers are duly placed upon the register, whilst a house or other property supplying no elector to the register should receive attention to see that the absence is not due to any oversight. In this way accurate information is acquired and the register is kept up to date. Upon the particulars ascertained the party agent makes up his marked register, which is the key to party strength in the division; and from the same sources are lodged the various claims and objections to voters, when the authorities are compiling the annual register of electors.'

The following chapters are based on the assumption that the electoral register has been completed and finally published. It will be noticed that one of the amendments introduced into rule IX by sub-rules (6) and (7) allows 'the amendment of any Electoral Roll at the time being in force'. Should an election agent therefore discover that the electoral roll for his constituency contains a large number of mistakes, or that there are many omissions, he may apply to such authority as has been appointed by the local Government for the amendment of the electoral roll.

'If the said authority is satisfied after such inquiry as a local Government may by regulation prescribe that the entry relates to the applicant and is not erroneous or defective in any particular, he may amend the Roll or cause it to be amended accordingly.'

After the first general election in India there was considerable delay on the part of many candidates in filing their returns of election expenses. In the majority of cases this delay was condoned by the local Government or the Governor-General in Council under the proviso to sub-rule 4 of rule V. It is unlikely that concessions on such a large scale will be made in the future, and the attention of candidates is therefore drawn to rule XIX (1), as amended, which allows thirty-five days from the date of the publication of the result of an election for lodging with the returning officer the return and declaration of the election expenses. In the previous rule the time allowed was 'one month or such longer period as the Governor may allow'. The matter is fully dealt with in the chapter dealing with election expenses. So, too, as regards ignorance of the election procedure. A reference to the

reported cases will show that in several of them the Commissioners recommended that as the election procedure was new the persons reported for Corrupt Practices might be relieved from any disqualification incurred under the electoral rules. In cases that may arise in the future it is doubtful whether a recommendation based on similar grounds would be entertained. The old adage '*Ignorantia juris neminem excusat*' will probably apply. Lastly, it is necessary to point out that the position of the candidate as regards liability for the acts of his agent is as difficult in India as it is in England.

It is thus stated by Mr. Jelf in his book on *Corrupt and Illegal Practices* :

'The conclusion of the whole matter is, that the really innocent and careful candidate runs some risk indeed, but a very slight one, of losing his seat for things which he could not have helped, but it must be observed that he does run a very great risk—indeed, in some cases it is a certainty—of losing thousands and thousands of pounds in the expenses of his defence. The petitioner's game is to make the petition as wide, and the particulars as voluminous, as possible; and the defence of each and all of these, the rotten as well as the substantial charges, is an extremely costly matter. Look at the case of the *Montgomery* boroughs. There sixty-nine charges were made, the bulk of which were worthless, but which all had to be answered at the cost of immense labour and expense. Look at the flagrant cases of this abuse at *Worcester* and at *Pontefract*. The former of these is described in the judgment as "inflicting intolerable hardships", and in the latter the charges made were adjudged to be "scandalously reckless" . . . The respondent can have no men of straw to fight his battle for him. If he is defeated, he pays the petitioner's costs and loses his seat as well. It is therefore a crying injustice that, when he wins the contest, he should have to pay such a high price for his victory. This is the one serious wrong remaining in English election law. If it be not removed it will weigh heavily against the excellent work which the Acts of 1883 and 1895 have done in behalf of the right; and an election petition, which is intended to further purity in the exercise of the franchise, and to deprive money of its power to override the real mind of the people, will become, on the contrary, a mere instrument of party machinery, by which rich men and rich associations may wear out the strength of candidates who are too poor to fight in such an unequal struggle.'

The chance of 'maintenance' of election petitions is certainly not removed by rule XXXV, which fixes the amount to be deposited by a petitioner in an election petition, who may be a voter, a mere 'man of straw' not necessarily a candidate, at Rs.1,000 as against the £1,000 in England prescribed by section 6 (5) of the Parliamentary Elections Act, 1868. The President of the Commissioners may, it is true, demand further security, but unless there is a marked advance on the present practice of civil courts in the matter of costs and their security, the respondents are unlikely to be saved from vexatious and unnecessary litigation. In England, too, it has been found that corrupt practices are more satisfactorily prevented if the attendance of the

public prosecutor at all election petitions is made compulsory. In India it is left to the order of the three Commissioners.

Another important point where the law in India differs from that in England is the omission of those provisions of the Corrupt and Illegal Practices Act which deal with the exoneration of the honest candidate, otherwise than when respondent in an election petition. In election law the doctrine of agency has been pushed to its extreme limits, and a candidate might easily be punished for acts utterly beyond his control. While rule XLIV (2) reproduces section 22 of the Act of 1883, the very useful provisions of section 23 find no place in the rules. This section permits a candidate or his election agent to apply by motion to the Divisional Court, or by application to a Judge in Chambers, who when satisfied that certain acts or omissions which are in contravention of the Act 'did not arise from any want of good faith' but from 'inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature', may 'make an order allowing such act or omission to be an exception from the provisions of the Act'.

In a very recent case, the candidate and election agent for the *Forest of Dean* Division applied for relief from penalties under the Corrupt and Illegal Practices Prevention Act 1883. Certain payments had been made in excess of the prescribed maximum. It was held that 'it was consistent with the public interest that the candidate himself should have relief: but the position of the agent was different. His affidavit did not show that he took the necessary steps to see from day to day that he was not spending too much, and it was not consistent with the public interest that he should be relieved'.



## CHAPTER II

### THE CONSTITUENCY : THE ELECTORAL ROLL

(Vide Schedule I for each legislative body)

Rules IV, IX, and X, with regulations made by Local Governments  
under Rule IX

#### ELECTED MEMBERS

##### *Constituencies*

IV. The elected members shall be elected by the constituencies specified in Schedule I, and the number of members to be elected by each constituency [<sup>1</sup> and the number, if any, of seats reserved for Non-Brahman Mahratta members (hereinafter in these rules referred to as reserved seats)], shall [<sup>2</sup> subject to the provisions of that Schedule] be as stated therein against that constituency.

<sup>3</sup> Provided that the provisions of this rule shall, in respect of the University constituency referred to in the said Schedule, first have effect for the purpose of the general election next following the date on which a University is constituted at Nagpur.

Provided that the local Government may by regulation divide into two or more constituencies any of the plural-member constituencies and may distribute among the new constituencies so created the seats entered in the Schedule I against the constituency which has been so divided, but not so, however, as to reduce the total number of reserved seats.

##### *Electoral Roll*

IX.—(1) An electoral roll shall be prepared for every constituency, on which shall be entered the names of all persons appearing to be entitled to be registered as electors for that constituency. It shall be published in the constituency together with a notice specifying the mode in which and the time within which any person whose name is not entered in the roll and who claims to have it inserted therein, or any person whose name is on the roll and who objects to the inclusion of his own name or the name of any other person on the roll, may prefer a claim or objection to the Revising Authority.

<sup>1</sup> In the <sup>Madras and</sup>  
Bombay Rule only.

<sup>2</sup> In the Madras Rule only.

<sup>3</sup> In the Central Provinces Rule only.

(2) Subject to the provisions of these rules, the local Government shall make regulations providing for:

- (1) the authority by whom the electoral roll shall be prepared and the particulars to be contained in the roll ;
- (2) the time at which the roll shall be prepared ;
- (3) the publication of the roll in such manner and in such language as to give it wide publicity in the constituency to which it relates ;
- (4) the mode in which and the time within which claims and objections may be preferred ;
- (5) the constitution and appointment of Revising Authorities to dispose of claims and objections ;
- (6) the manner in which notices of claims or objections shall be published ;
- (7) the place, date, and time at which and the manner in which claims or objections shall be heard ;

and may make such regulations to provide for other matters incidental or ancillary to the preparation and revision of the roll as it may consider desirable. Such regulations may be made as to rolls generally or any class of rolls or any particular roll.

(3) The orders made by the Revising Authority shall be final, and the electoral roll shall be amended in accordance therewith and shall, as so amended, be republished in such manner as the local Government may prescribe.

(4) The electoral roll shall come into force from the date of such republication, and shall continue in force for a period of three years, after the expiration of which period a fresh roll shall be prepared in accordance with these rules, provided that the local Government may, by notification in the Gazette, direct the preparation in accordance with these rules of a fresh roll at any time before the expiration of the said period.

(5) If a constituency is called upon to elect a member or members after an electoral roll has ceased to have force and before the completion of the new electoral roll, the old electoral roll shall for the purposes of that election continue to operate as the electoral roll for the constituency.

(6) Notwithstanding anything hereinbefore contained, any person may apply to such authority as may be appointed in this behalf by the local Government for the amendment of any electoral roll for the time being in force, and the local Government may, at any time after any such application has been made in respect of an electoral roll, by notification in the Gazette direct the preparation of a list of amendments thereto, and all the provisions of this rule shall apply in the case of every such list in like manner as they apply in the case of electoral rolls ; provided that, where any such application is made for the correction of an existing entry in the electoral roll and the said authority is satisfied after such inquiry as the local Government may by regulation prescribe

that the entry relates to the applicant and is erroneous or defective in any particular, he may amend the roll or cause it to be amended accordingly

(7) When any list of amendments has been republished under sub-rule (6), the electoral roll to which it relates shall be deemed to have been amended accordingly.

An examination of the various 852 constituencies and the nomenclature employed to describe them fully justifies the dislike of communal representation. It makes it all so much more difficult. Apart from the Universities, in the United Kingdom all constituencies are of the same kind, electors have the same qualification, and elections can, apart from voting by proxy, therefore be held on one and the same day throughout the country.

In India there is the unavoidable and somewhat unsatisfactory division into 'Muhammadan' and 'non-Muhammadan', sub-divided again into 'Urban and Rural'. Apart from this each Province recognizes in its rules also a 'general' constituency and a 'special' constituency. Some also have 'reserved seats', as, for example, in Madras, where 28 out of the 98 elected seats are reserved for non-Brahmans, or for Mahrattas in the Bombay Presidency. The number of constituencies of course vary considerably in the different Provinces.

At the beginning of Chapter VI rule VI is reproduced. This shows what, in each Province, constitutes a 'general' or 'special' constituency.

The importance of the general constituency is to be found in the proviso to rule X, 'provided that no person shall vote in more than one general constituency', and in rule VI, which (except in the United Provinces) specially provides that in the case of a non-Muhammadan, Muhammadan, European, Indian Christian, Sikh, &c., constituency, the voter must himself be a non-Muhammadan, European, Indian Christian, or Sikh, &c., to be eligible for election as a member of the Legislative Council.

The Council of State has the shortest definition. A 'General Constituency' means any constituency which is not a 'special constituency', and a 'special constituency' means a European Commerce constituency. All Provinces recognize the need for the University (where there is one) being made a special constituency. As in the United Kingdom, this is non-territorial, has special qualifications for its electors, and special rules for the appointment of a returning officer and the return of candidates. Similarly as regards 'Commerce and Industry', which in the Punjab is divided, one constituency being allotted to commerce and another to industry, these electorates will, to a considerable extent, conduct their own elections, subject, of course, to rules and regulations made either by the Imperial Government or the Local Government concerned. Bihar and Orissa and the Central Provinces have a 'mining' constituency: all except Assam recognize a special constituency for landholders which is usually territorial, but

may, as in the Punjab, be arranged for the communal representation of Punjab landholders (general), Muhammadan landholders, Sikh landholders, and Baloch Tumandars (non-territorial). For non-territorial constituencies special regulations will be made by the Provincial Governments concerned as regards both the qualifications of an elector or candidate, and the manner of recording votes. Here it is only possible to deal with general constituencies or such special constituencies as are formed on a territorial basis, in which voting will presumably follow the lines laid down for general constituencies.

As regards these it is apparent that the English modern system of holding a general election throughout the country on one day cannot be followed. Apart from difficulties special to the country such as distance, lack of transport, or facility of communication, a man may in India be an elector for three or more constituencies, and have to record his vote at different polling stations. The Representation of the People Act of 1918, section 21 (i) is as follows: 'At a general election all polls shall be held on one day and the time fixed for receiving nominations shall be the same in all constituencies, and accordingly the first Schedule to the Ballot Act, 1872, shall be modified as shown in Part I of the second Schedule to this Act.' The object in England was to defeat plural voting, reduce expenditure, and limit the inevitable turmoil and dislocation of ordinary business that accompanies the taking of a poll on one day. In pre-reform days in some constituencies, e. g. Westminster, the poll remained open for 40 days! Now the day appointed for the poll must in all cases be the ninth day after the day fixed for the election, i. e. the day of nomination (Rule 14-A of the Ballot Act, 1872.) In the case of Universities an exception is made. The poll must begin not later than the twelfth and not earlier than the third day after nomination, and shall be open for five days. Voting for this constituency in England, but not in all cases in India, is allowed by post.

In India the poll for each constituency is confined to one day: but all the various constituencies cannot be polled in less than three days. An elector who wishes to record his vote for

- (a) The Council of State,
- (b) The Legislative Assembly,
- (c) The Provincial Legislative Assembly (University Constituency),
- (d) The Provincial Legislative Assembly (Non-Muhammadan Rural Constituency),

and perhaps also (e) Landholders' constituency will be fairly busy, and may receive the attentions of many election agents.

The efforts of the returning officer and his assistants, who will have, it must be remembered, to deal with inexperienced election agents and an electorate, 75 per cent. of which is illiterate, will be taxed to their utmost, if 'the result of the election is not materially affected by some irregularity', rule XLIV (c).

At the outset, therefore, let us emphasize the need for mutual assistance. The election agents can make the task of the various presiding officers at the polling stations easy or difficult. The returning officer can facilitate or obstruct. It is inevitable that there must be in the more thickly populated constituencies considerable difficulties, yet unsuspected, which can only be overcome by a policy of give and take, and this too without departing from a careful observance of the rules.

To begin with, a constituency consists of voters, i. e. persons whose names have been registered on the electorate roll for that constituency.

These rolls inevitably have to be prepared, published, and revised in a hurry, in accordance with regulations made by the various local Governments, and which differ in different localities.

In England the electoral register is now revised twice a year. The expense is considerable, and in India it has been thought better that the register should ordinarily remain in force for three years subject to the proviso to sub-rule (4) of rule IX, allowing earlier revision, and to sub-rule (6) allowing the amendment of a defective register. The main object of this amendment, introduced in 1923, is to admit a revision of the electoral register where it is proved that the latter is so incorrect as to be the cause of disqualifying voters. Similarly in the case of a University constituency, every year there will be a number of graduates whose names might well be added to the roll. It is important at the time of nomination that the description in the nomination paper should accurately reproduce the entries in the electoral register as regards the proposer, seconder, and candidate to prevent objections.

Mr. Lloyd, in *Elections and how to fight them*, at page 10 gives the following advice on keeping the register up to date.

Notices are sent out for a registration meeting, at which all members of the party are invited to attend.

‘The agent also is present with the register of the district, and this is carefully gone through, name by name. Removals and lost qualifications are noted, while particulars are taken in order that newly-qualified members of the party may come upon the register immediately they are entitled to be enrolled’.

It is in fact an important part of the duty of the candidate's supporters to see that their ranks are not diminished by any omissions.

When the roll has been finally written up after revision the constituency has been created. Until these electoral rolls have been prepared it is impossible for the election agent to work out his plan of campaign. He will eventually have to divide up his constituency into various circles, with a sub-agent in charge of one or more circles. The latter should within a month after the first publication of the electoral roll know all there is to be known about each voter on the register, and be personally known to the voter. It is through him that

the candidate will get access to his constituents. Where the constituency is large, personal canvassing by the candidate is difficult, but much can be done by a series of public meetings, both those advertised and arranged, and those informal addresses to constituents given by a candidate on his rounds through the constituency.

The candidate in a constituency where there is likely to be a contest has to acquire popularity, and will wish to do so without losing merit. The procedure he usually adopts towards this aim is known in England as 'nursing the constituency', and is thus described by Channell, J., in *Great Yarmouth* (1906: 5, O'M. & H., 190).

'Then there is another class of expenses which is much more doubtful but which always occurs, and that is this, the expenses which a candidate incurs for the purpose of making himself personally popular. There is an expression which is sometimes used in these cases—and one has to use the slang expressions in these cases—and that is 'nursing a constituency'. Now that class of expenses is not, I think, necessarily part of the conduct and management of an election. You have to look carefully at each expense to see whether it is identified with the particular election in prospect, but speaking generally, expenses of that character would not in my opinion come within "expenses in respect of the conduct and management of the election", which have to be paid through the election agent, and which have to be kept within a definite maximum. At the same time it is obvious that the very things which are done for the purpose of what I referred to as "nursing the constituency", or for promoting the personal popularity of the candidate, would require very careful consideration as to whether or not they come within the corrupt practices, either of bribing or treating.'

An illustration of this difficulty is given in a subsequent chapter.

A large majority of the Indian constituencies return only one member. There are, however, 100 constituencies returning two or more. For example, the Madras Presidency sends four members to the Council of State: Bombay City (non-Muhammadan) sends two to the Legislative Assembly: the Bengal Commerce and Industry constituency returns six members to the Bengal Legislative Council. In these 'plural member' constituencies it is provided by rule XIV (5) that every elector shall have as many votes as there are members to be elected, but (except in Bombay) no elector shall give more than one vote to any one candidate. In Bombay the elector 'shall be entitled to accumulate all of them upon one candidate or to distribute them among the candidates as he pleases'. In Bihar and Orissa and in the Punjab this sub-rule is omitted, as in these Provinces each constituency returns only one member to the Legislative Council. In one constituency in Bengal (the Presidency and Burdwan European) the election is made 'according to the principle of proportional representation by means of the single transferable vote, and votes shall be given in accordance with regulations made in that behalf by the local Government'.

In a plural-member constituency, should a maximum scale of

election expenses be imposed, regulations would appear to be necessary dealing with 'Joint Candidature'.

The local Government has the power to divide any of these plural-member constituencies into two or more constituencies, but may not in so doing reduce the number of reserved seats (proviso to rule IV). Some of the constituencies in India are very large, the area being conterminous with two or more Commissioners' divisions. More especially is this the case with the constituencies of the Legislative Assembly and Council of State. The latter contains constituencies consisting of a whole Province. The inconvenience caused to the candidate appears unavoidable, if the criterion in the creation of the constituency is to be the number of electors. But it may be hoped that when a limit is imposed on a candidate's expenditure, the area he has to cover and the number of polling stations will also be taken into account.

We have seen that a constituency is created by the registration of electors. In one district of a Province there may be several constituencies or parts thereof with a separate register for each, thus :

*Council of State* : non-Muhammadan, Muhammadan.

*Legislative Assembly* : Urban non-Muhammadan, Urban Muhammadan, Non-Muhammadan rural, Muhammadan rural, Landholders.

*Legislative Council* : Urban non-Muhammadan, non-Muhammadan rural, Muhammadan rural, Landholders.

The District Magistrate or Divisional Commissioner is not likely to be the Returning Officer for all the constituencies. Usually when the territorial boundaries of a constituency are conterminous with those of a division the Commissioner (except in the Madras Presidency) is the Returning Officer : if the constituency exceeds these boundaries the Returning Officer may be one of the Secretaries to Government. It is desirable that in each district there should be a separate electoral roll for each constituency or part thereof, but the expense of separate printing may be considered too great, in which event the candidate for the Legislative Assembly must find out, from the electoral rolls prepared for the Provincial Legislative Council, those electors qualified to vote for the Central Legislature. It is suggested that these might conveniently be distinguished by the letters L or C (Legislative Assembly or Council of State) being inserted opposite their names in the last column of the electoral register.

In the rules as originally made, votes in any general or *Landholders'* constituency had to be given in person. By an amendment to rule XIV the words 'and landholders' have been omitted. Electors for the latter constituencies can, like electors for a University constituency, record their votes by post in the manner prescribed by regulations, where this is permitted. But there can be no voting by proxy.

## CHAPTER III

### THE ELECTOR

#### Rule X

#### *Right to Vote*

**X.—(1)** Every person registered on the electoral roll for the time being in force for any constituency shall, while so registered, be entitled to vote at an election of a member or members for that constituency ; provided that no person shall vote in more than one general constituency [and no person shall vote both in the Commerce and in the Industry constituency].<sup>1</sup>  
provided that—

- (a) no person shall vote at any general election in more than one general constituency, and
- (b) no person shall vote at any election if he is subject to any disability stated in rule VII.

**(2)** If any person is in the course of the hearing of an election petition under these rules proved to have voted at the election in contravention of the proviso to sub-rule (1) his vote shall be void.

The object of the constitutional reforms in Council has been defined by the Government of India to be

‘ the transfer of a gradually increasing share in the work of Government to Indian administrators, who will have openly to justify their policy and their action to Indian electors . . . but though under the proposals in the Report the Councils will be in the main elected on a liberal franchise, we must recognize that the electorates will, for some time, be unable either to formulate their requirements intelligently, or effectively to impose a mandate upon their representatives.’

We have seen that in the rules a variety of constituencies has been created. Difficult as it has been to form constituencies, which might, even with the additional advantage of a system of nominated members, adequately provide for any real expression of the will of the people, the avowed ideal of democracy, it has been even more difficult to prescribe the qualifications for the electoral franchise in these 852 constituencies. What suits Madras would leave Assam with a very meagre electoral register. If Bihar and Orissa adopted the limitations found necessary in the Punjab, there would be no electors in some of the more backward districts. Bombay must make provision for the manual workers in the textile factories, and Bengal for the wage-earners along the banks of the Hugli. It needs, therefore, an intimate knowledge not only of the land revenue system in each Province, but

<sup>1</sup> The proviso in square brackets appears only in the Punjab rule.



of the degree of development to which each Province has attained in the sphere of local Government to appreciate the marked diversity in the franchise qualifications. Only the barest summary can be attempted here. For the details the reader must examine the Schedule II relating to his own Province. This diversity, moreover, detracts from the value of any comparison with the English system, where throughout the United Kingdom the same qualifications confer the right to vote.

In the case of each Province therefore and also for the Legislative Assembly and the Council of State the electoral roll, apart from certain general rules as to who may be registered, is based on qualifications specified in Schedule II attached to the rules. This schedule with the definitions contained therein will require most careful examination by the election agent.

In fact, in future elections the election agents will, and should be, the persons who will ensure a full and accurate register of the voters. The general rules applicable to all the Legislatures are that the elector must be a British subject of sound mind who has attained the age of 21 years (18 in Burma), and has not been convicted of any corrupt practice. This last disqualification may be removed by order of Government.

If the franchise were strictly confined to British subjects, persons born in Native States, though abiding and carrying on business in British India, would be unable to vote unless they were 'naturalized' or 'denizens', i.e. alien born who have obtained letters patent to make them British subjects. Armenians and Marwaris would thus be excluded. The power has, therefore, been given to local Governments in rules V and VII to direct that 'subject to such conditions as it may prescribe, a Ruler of any State in India or the Rulers of any such States or a subject of any such State or any class of such subjects shall not be disqualified for registration by reason only of not being a British subject or British subjects'.

Similarly, as a result of a debate in the House of Commons, provision was made in rule VII for the possible future concession of female suffrage.

In Madras, by a resolution of the 1st April 1921 the sex disqualification was removed; in Bombay on the 28th July 1921, and in the United Provinces on the 1st February 1923.

On the 1st February 1922 the Legislative Assembly passed a resolution that in every Province which had accepted the removal of the sex disqualification, women should be able to vote at the election of members in a constituency for the Legislative Assembly.

In the three Provinces referred to above therefore the revision of the electoral roll and the preparation of a new register involves the registration of female voters not only for the Legislative Council of those Provinces but also for the Legislative Assembly.

It may be noticed that, except in Burma, no such provision is made for the election of a lady to any of the councils, on the lines of 8 and 9 Geo. V, c. 47, s. 1.

The qualifications of a voter in a general constituency are based on the fulfilment of certain conditions, some of which are necessary only in certain Provinces, and the importance and extent of which vary in different Provinces :

(i) Community, namely non-Muhammadan, Muhammadan, European, Anglo-Indian, Sikh, Mahratta, and Indian Christians.

The communal limitation is of importance, because it affects not only a person's right to a vote, but also his right to be a candidate.

(ii) Residence.

(iii) Occupation or ownership of a house or building of a certain value or under certain conditions of service.

(iv) The payment of or assessment to income-tax, cesses, local rates or municipal taxes, rates or fees of a certain amount.

(v) The receipt of a military pension.

(vi) The ownership, or holding of land or payment of receipt of Government revenue.

(vii) The discharge of certain duties.

The qualifications for a special constituency have to be prescribed for each such constituency. Generally it may be said that the elector in a University constituency must be a graduate of seven years' standing : for commerce, industry, or for a planting or mining constituency, a person whose name is entered in the list of members for the time being in force of the association forming such constituency.

For landholders' constituencies the qualifications depend on the payment of a certain amount of Government revenue or the discharge of certain duties. An elector may have his name registered on the electoral roll of one or more special constituencies if he has the prescribed qualifications. He cannot, however, vote in more than one *general* constituency. If he does he commits the offence of 'personation'. Thus a Muhammadan can only vote in one Muhammadan constituency, urban or rural ; he cannot also vote in a European, Anglo-Indian, Indian Christian, non-Muhammadan, or Labour constituency, and vice versa. But he can also vote in a University and in a Landholders' constituency if he possesses the needful qualification.

To entitle a man to vote in a general constituency residence accompanied by occupation of a house or the holding of land is necessary. The possession of property must be a personal right ; to hold property in a fiduciary capacity does not confer a vote, but in the case of a Hindu joint family, the family is adopted as the unit for deciding whether the requisite qualification exists, and if it does exist, the person qualified is the member authorized by a majority of the family, or, in the case of a Hindu joint family, either a member so authorized or the manager thereof. But if a person qualified is a representative

of a joint family he cannot, except in the Central Provinces, also claim a vote in his personal capacity. In Bengal the *mutwalli* or manager of a *wakf* estate 'shall be deemed to hold such estate in his own right'. In the United Provinces provision is made also for joint tenancies, and one member is nominated by the joint tenants to exercise the right of franchise on behalf of the tenancy concerned. In Madras, Schedule II, section 19, provides for a person to represent joint holders of land. Such nomination must be made in writing by the majority of adult qualified male persons so registered as joint holders of land. In the Punjab, however, each co-sharer, whose share would amount to a qualification if held separately, is given a vote and a minor's share is deemed to be the share of his father or eldest male brother, if the father is dead.

What actually constitutes occupation or residence varies according to the municipal law in different Provinces. Some rules lay down that a voter must 'reside', others that he must 'have a place of residence' in the constituency.

The Bihar and Orissa rules thus define residence in Schedule II, rule I (d) :

'A person shall be deemed to have a place of residence within the limits of a constituency if he—

- (a) ordinarily lives within those limits, or
- (b) has his family dwelling-house within those limits and occasionally occupies it, or
- (c) maintains within those limits a dwelling-house ready for occupation in charge of servants and occasionally occupies it.'

The Central Provinces' definition is stricter :

'(a) A person shall be deemed to have a place of residence in a constituency if he—

- (i) has actually dwelt in a house or part of a house within the constituency for an aggregate period of not less than 180 days during the calendar year preceding that in which the electoral roll for the time being under preparation is first published under these rules ; or
- (ii) has maintained within the constituency for an aggregate period of not less than 180 days during that year a house or part of a house, as a dwelling for himself in charge of his dependants or servants and has visited such house during that year.'

In the Madras Presidency the elector must have resided in the constituency for not less than 120 days in the financial year, the 1st April to the 31st March, preceding that in which the electoral roll for the time being under preparation is first published under these rules. For a Madras city constituency he must have occupied a house for not less than six months. Occupation means liability to pay rent, or exemption from the payment of rent 'by virtue of any office, service, or employment'. In Bombay, in the case of urban constituencies, occupation as owner or tenant on the 1st day of April next preceding the date of publication of the electoral roll suffices ; in the

case of rural constituencies in that presidency, the residence must be for six months in a division any part of which is included in the constituency.

A person who occupies any dwelling-house other than a house in any Military or Police Lines, by virtue of any office, service, or employment shall, if the dwelling-house is not inhabited by the person in whose service he is in such office, service, or employment, be deemed to occupy the dwelling-house as a tenant.

It is probable that the various revising authorities will have to deal with a fair number of claims advanced or contested on the grounds of residence. The election agent should, therefore, make himself thoroughly acquainted with the Municipal Laws and Regulations of his province, and with any decision of the High Court affecting the same. There are not very many of these, and some will not apply under the new law. Reference may be made, however, to the following rulings : 1, L. R., 41, Cal., 384 ; 39, Cal., 598 ; 45, Cal., 950 ; 21, Allahabad, 380 ; 30, Madras, 113 ; 8, Bombay, 209 ; 9, Bombay, 838.

The valuation of the franchise, if the phrase may be permitted, differs considerably not only as between the provinces, but even as between different districts of the same province. A careful study of Schedule II is necessary to appreciate the marked divergence.

The *minima* can only be roughly indicated by way of comparison. In Madras assessment to municipal tax of not less than Rs. 3 or the holding of land on which the annual rent value is not less than Rs. 10, confers the franchise.

In Bombay and in the United Provinces the payment of land revenue of Rs. 16, or in the liability to pay Rs. 25 is sufficient. In Bengal a vote in a rural constituency can be claimed by any one who has paid Re. 1 as road cess or Rs. 2 as chowkidari tax. The urban qualification in the Punjab is assessment to a municipal tax of not less than Rs. 50 as against Re. 1-8 in Bengal or Rs. 3 in Bihar and Orissa. The rural voter in the Central Provinces must be liable to pay revenue of Rs. 40 in five districts or Rs. 50 elsewhere, whereas in the Chota Nagpur Division of Bihar and Orissa the payment of a local cess of 8 annas is sufficient.

The main difference, at present, between the English and Indian elector will be found to lie not so much in the qualifications for the franchise, as in the inexperience and ignorance of the individual. A further difference may be noted which will probably in time be removed. In England the election agents play an active part in the preparation of the electoral roll. In India, at any rate, at first, the preparation and publication must be undertaken by purely official agency. It is difficult work, requiring much patience and meticulous accuracy. The regulations made by the local Governments, as to the appointment of officers to prepare and revise the roll, give the necessary detailed instructions.

It is important to notice that the orders of the Revising Authority as to entries on the electoral register are final, i. e. 'that it is conclusive that the people who are on it have the qualification which entitles them to be there' (Worcester, 1880).<sup>1</sup> Mistakes in the electoral roll are none the less inevitable, and people who have no right to a vote do find their names on the register. Even with the biennial revision undertaken in England, at the general election in 1922 various instances were reported in the newspapers of 'freak voting'. A boy aged 5 years voted at Heywood: a schoolboy of 12 in South West Hull, and yet another of 11 years at Peterborough. It was reported that the vote of an infant aged 2 years, brought to the polling station by his mother, was allowed to be recorded at Portsmouth. And yet an infant (like an unpardoned felon) is prohibited by statute from voting!

'But the presiding officer has no authority to inquire into the capacity of any voter on the register, who applies for a ballot paper. The register is conclusive on the presiding officer and he is not entitled to refuse to return a ballot paper to an elector whose name is on the register, even though such elector be wrongly on the register, or be prohibited from voting by statute or by the common law of Parliament. . . . The presiding officer is in no way concerned with persons who are disqualified from voting either by the common law of Parliament or by statute. If these persons are on the register their votes must, if tendered, be accepted, even though they will be struck off on petition.' (Fraser, 3rd ed., p. 50. Parker's *Election Agent*, 3rd ed., p. 308.)

The steps to be taken by the presiding officer to satisfy himself as to the identity of the voter are dealt with later. This illustrates the need for careful compilation of the register. Mere misdescription in the register, however, does not disqualify, if the identity of the person whose name is entered can be satisfactorily established. Thus, in *Purnea* (1920) the candidate's seconder subscribed himself as 'Modo Sahu, son of Munni Lal Sahu, elector of the Kasba Union Committee, Circle No. XI'. In the register of electors there was an elector of the name of Modo Sahu, the son of Munni Sahu, but there was no Modo Sahu who was the son of Munni Lal Sahu. At the scrutiny of the nomination papers neither the candidate nor his representative, nor the proposer, nor the seconder, put in an appearance, and the returning officer held that it had not been shown that the seconder was an elector of the constituency. He accordingly of his own motion rejected the nomination paper. It was held that this was wrong, and that the Election Court could correct the mistake.

'We are not unmindful of the fact that in India the use of double names and aliases sanctioned often by religion and custom is far more widely prevalent than in England, and that the investigation into differences between the electoral roll and the statement of voters and nominators may prove no light task for election courts; but the framers of the rules appear to have advisedly refrained from attaching finality to the electoral roll, and we presume that it was the intention

<sup>1</sup> 3, O'M. and H., 187.

of the Legislature in India to follow the English rule as to the correction of a misnomer.'

There is no doubt then as to the electoral register's authority over the presiding officer. But what is the case as regards a returning officer at time of nomination, or an election court of inquiry? The matter has come under judicial decision in India. In the *North Bhagalpur* case [1, I. E. P., 53] the Commissioners held that their powers, even under rule XLII, were limited by the definite provisions of rule IX (3), and that they were therefore 'precluded from enquiring into the question of the Respondent's possession of the necessary qualifications as a voter'. If an Election Inquiry Commission cannot inquire into a question of qualification, *a fortiori* a returning officer could not do so at a time of nomination. With regard, however, to any statutory disability the case would seem to be different. In another case (*Purnea*) the Commissioners held that

'it would seem that under the election rules with which we are concerned, as in England, the right of a voter, if on the register, to vote, propose, or second cannot be challenged on any ground other than that of personal disability or want of status: and that except as to cases coming within these grounds the register is conclusive not only upon the returning officer but also upon an Election Court on scrutiny. But where there is a doubt, evidence of identity may be given before the returning officer at the time of scrutiny of nomination papers (whose enquiry must be summary) as well as before the court.'

The amendments made in 1923, namely, the proviso to rule X, sub-rule (2), together with the wording of rule XLIV (1) which refers to 'the reception of votes which are void' should make it clear that

'the votes of persons on the register cannot be struck off on a scrutiny on the ground that their names ought not to be on by reason of non-residence, insufficiency of qualification, &c., but the votes of persons who are under a personal disqualification may be struck off although their names are on the register.' (Vide *Rogers on Elections*, vol. ii, 10th ed., p. 330.)

The orders of the revising authority, therefore, are *final*. Neither the returning officer nor the presiding officer nor an election court will inquire whether a name has been improperly admitted in the electoral register. It will, however, be the duty of each of these authorities to see that persons who are *prohibited* from voting (or from standing as a candidate) do not evade such prohibition. The presiding officer must, we shall see, take steps to see that only those persons vote, whose names are on the electoral roll.

It is suggested that the roll should contain in the case of each elector an adequate description sufficient to permit of ready identification. The father's name, the local address should be given, and also the qualification of the elector, e.g. 'Assessed to Income-tax', 'Military Pensioner', 'Owner of house annual value Rs. 50', or the

like. To save printing abbreviations will probably be used. 'I.T.', 'Rs. 50', M.R. (Municipal Rates), M.P. (Military Pensioner), &c., remembering, however, that any undue economy in labour or in material may lead to much trouble hereafter if the accuracy of the register, as has been frequently the case in municipal elections, is impugned. Where a separate roll is not maintained, those electors who possess the further qualifications necessary for the Council of State or Legislative Assembly might be marked by the entry C or L. Comparatively few electors will, during the first elections at least, take any trouble themselves to assert their rights: election agents will have to assist the local registering authorities, not only in awakening interest in the elections, but in allaying suspicions. For the rural voter may be apprehensive that the registration of his name is merely a preliminary step to increased taxation. Unless the candidates and their agents take steps to disabuse him of this idea and explain to him the privilege of civic rights and the opportunities offered thereby, no one else will. One Government indeed found it necessary to issue a circular explaining that the franchise was a privilege—not a penalty.

The election agent will be wise at an early date to perfect his arrangements for prompt identification at the polling booth. The documents, as for example, a demand for a municipal tax or a rent receipt, on which registration is granted, should be ready for production if, when the elector goes to record his vote, his identity is challenged. Probably also it will be useful both in urban and rural areas for the election agent to satisfy himself that the elector's identity is accepted by those local witnesses to whom the presiding officer at the poll would ordinarily have recourse, whether the tahsildar, patwari, village head-man or chowkidar, or the municipal tax collector. The efficiency of registration and revision is proved by the absence of objections at the polling station. The wise candidate will insist that his agents spend their time, and his money, in anticipating possible objections rather than in making and defending them at a subsequent stage.

'It is no part of the function of a candidate's polling agent or of an elector to interfere with the presiding officer at a polling station in the acceptance or rejection of votes, or in the delivery of or refusal to deliver, ballot papers. The time to question the presiding officer's decision in any of these respects is on a scrutiny in an election petition.' (Parker, p. 320.)

What constitutes personal disqualification? Not failure to comply with the tests for entry on the register as, for example, non-residence, insufficiency of revenue paid, or the like, for objections on such grounds should be and can only be taken before the registering or revising officer. Disenfranchisement, it was decided in *Stowe v. Joliffe* (1874: L. R. 9 C. P., 750), would occur only in the case of persons prohibited from voting by any statute or by the common law of Parliament. In India the necessary provision will be found in rule X (1) (b) and (2).

Votes accepted by a presiding officer which could be struck off on a scrutiny would be the following :

- (a) Aliens, whose disqualification has not been removed.
- (b) Females (unless the sex disqualification has been removed).
- (c) Any one adjudged by a competent court to be of unsound mind.
- (d) A minor, i. e. person under the age of 21 in India or 18 in Burma.
- (e) Any one who has been within the past five years :
  - (i) Convicted of an offence under chap. IX. A, I. P. C. punishable with imprisonment for a term exceeding six months.
  - (ii) Reported guilty by an Election Court of a corrupt practice as specified in Part I or pars. 1, 2, or 3 of Part II of Schedule IV.
- (f) Any one who during the past three years has been reported by an Election Court as guilty of a corrupt practice other than those mentioned in (e) (ii) above.

As regards the enfranchisement of females as the result of a resolution passed under the proviso to rule VII (1), it would seem that the same qualifications prescribed for male electors would apply, and that any proposal to enfranchise women who did not possess such qualifications would be *ultra vires*. It would, however, it is submitted, be legitimate to prescribe further qualifications other than those specifically included in the rules as qualifications for the franchise.

For example, it might be considered desirable to classify women as 'educated' or 'literate', and to limit the extension of the franchise only to that class of women who possess certain prescribed characteristics of literacy, because literacy is not a factor which finds a place as a qualification for male electors. It would not, on the other hand, be legitimate to treat as 'a class of women' all women who possess a property qualification which is higher than that required of male electors. Similarly, if this view is correct, the lady elector in India could claim a vote on attaining the age of 21 instead of 30 as in England. It must be remembered that the qualification of electors are included in the electoral rules, not prescribed by regulation, and therefore existing qualifications cannot be altered by the local Government, save with the assent of Parliament. Rule XLVIII, however, would empower the Governor to give a final decision should a dispute arise.

Now the names of persons disqualified for corrupt practices, failure to lodge the return of election expenses, &c., are duly published in the *Gazette*. Their names *should* then be removed by the returning officer or whoever has charge of the register. If they have not been so removed, and ask for a ballot paper, it appears that the presiding officer has no option but to allow them to vote, though such vote would under rule XLIV (c) be rejected by an Election Court. The question of 'statutory disqualification' is of considerable moment to the returning officer at the time of nomination.

To sum up then : an elector is a person whose name, rightly or



wrongly, is on the electoral register. He should possess certain qualifications. Even if he does not, and his name is on the register, his vote is good. The vote of certain persons, however, who definitely are disqualified by these rules, even if their names are on the electoral register, might not be refused by a presiding officer, but *would* be rejected on scrutiny during the trial of an election petition.

The polling or personation agent of the candidate should therefore, if he saw such a person voting, make a note of the fact with a view to the subsequent cancellation of the vote, should the eventual result of the poll justify a petition. Sometimes the contest is so close that a vote one way or the other may make a difference, and a recount is asked for. As an instance of close voting in India, mention may be made of the *Punjab S.E. Towns*, where the successful candidate, subsequently unseated on a recount, was returned by a majority of one vote only over the petitioner. In *Salem and Coimbatore cum Arcot* there was the narrow majority of seven.

The elector, when he goes to the poll, has to establish the fact that his name, or what is intended to be his name, is on the register : not that he has a right to have his name on the register. It is simply a question of identity, and the presiding officer must on occasion use his own judgment, and, if need be, may make a short and summary inquiry where he has reason to suspect personation. Most candidates in England issue 'polling cards' to their constituents, telling them what their number is on the electoral register, showing them how they should place their mark on the ballot paper ; and where the polling station is situated at which they should vote. Here is a specimen :

#### GENERAL ELECTION . . . DIVISION

14th November 1922

Your Register No. is H 2499 and you should record your vote at the Village School (infants' room), Bridge St.

Put a X on your ballot paper against Smith's name, thus :

Allen	.	.	
Smith	.	.	X
Trevenian	.	.	

On the back is a portrait of the candidate Mr. Smith, with the advice :

- (1) Please vote early.
- (2) Do not write anything or make any other mark on the ballot paper.

The use of such a card certainly helps the elector : it also speeds up the process of identification, as the voter can at once give the presiding officer his number on the electoral roll.

It has been given as advice to presiding officers in England, that if an illiterate voter produces such a card, and intimates his or her desire to vote accordingly, the presiding officer should comply with the request and mark the ballot paper in the same way.

## CHAPTER IV

### THE CANDIDATE

#### Rule V

#### *General Disqualifications for being Elected*

V.—(1) A person shall not be eligible for election as a member of the Council if such person—

- (a) is not a British subject : or
- (b) is a female : or
- (c) has already made the oath or affirmation as a member of the Council or of any other legislative body <sup>1</sup> constituted under the Act : or
- (d) having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court : or
- (e) has been judged by a competent court to be of unsound mind ; or
- (f) is under 25 years of age : or
- (g) is an undischarged insolvent : or
- (h) being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part ;

Provided that the local Government may direct that, subject to such conditions as it may prescribe, a Ruler of any State in India or the Rulers of any such States or a subject of any such State or any class of such subjects shall not be ineligible for election by reason only of not being a British subject or British subjects :

Provided further that the disqualification mentioned in clause (d) may be removed by an order of the local Government in this behalf.

(2) A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for election for five years from the date of the expiration of the sentence.

(3) If any person is convicted of an offence under Chapter IX.A of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of

<sup>1</sup> This disqualification does not apply in the rules for election to the Council of State or the Legislative Assembly. (Vide p. 36.)

Schedule IV, such person shall not be eligible for election for five years from the date of such conviction or of the finding of the Commissioners, as the case may be ; and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for three years from such date.

(4) If in respect of an election to any legislative body constituted under the Act a return of the election expenses of any person who has been nominated as candidate at that election is not lodged within the time and in the manner prescribed by or under the rules made in that behalf, or if any such return is lodged which is found, either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, neither the candidate nor his election agent shall be eligible for election for five years from the date of such election :

Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this rule may be removed by an order of the local Government in that behalf.

### Rule VI

#### *Special Qualifications for Election in case of certain Constituencies*

#### COUNCIL OF STATE

VI.—(1) No person shall be eligible for election as a Member of the Council of State to represent—

- (a) a general constituency situate in the United Provinces or in the province of Assam, unless his name is entered on the electoral roll of a general constituency situate within the same province ;
  - (b) a general constituency situate in the province of Madras, Bombay, Bengal, the Punjab, or Bihar and Orissa, unless his name is entered on the electoral roll of the constituency, or of another constituency situate in the same province of the same communal description as that by which he desires to be elected ;
  - (c) a general constituency situate in the Central Provinces or in the province of Burma, unless his name is entered on the electoral roll of the constituency.
- (2) No person shall be eligible for election as a Member of the Council of State to represent a special constituency unless his name is entered on the electoral roll of the constituency.
- (3) For the purpose of these rules—
- (i) 'special constituency' means a European commerce constituency ;
  - (ii) 'general constituency' means any constituency specified in Schedule I other than a European commerce constituency.

## LEGISLATIVE ASSEMBLY

VI.—(1) No person shall be eligible for election as a member of the Legislative Assembly to represent a general constituency other than a constituency in the province of Burma or the Delhi constituency, unless

- (a) his name is entered on the electoral roll of the constituency, or of a constituency situate in the same province and prescribed for elections to the provincial council by rules under section 72 A of the Act, and
- (b) in the case of a non-Muhammadan, Muhammadan, Sikh or European constituency in the provinces of Madras, Bombay, Bengal, the Punjab, or Bihar and Orissa, or in the Central Province, he is himself a non-Muhammadan, Muhammadan, Sikh or European, as the case may be.

(2) No person shall be eligible for election as a member of the Legislative Assembly to represent a special constituency, or a constituency in the province of Burma or Delhi, unless his name is entered on the electoral roll of the constituency.

(3) For the purpose of these rules—

- (a) 'general constituency' means a non-Muhammadan, Muhammadan, European, non-European, Sikh constituency, or the Delhi constituency; and
- (b) 'special constituency' means a Landholders' or Indian Commerce constituency.

## MADRAS LEGISLATIVE COUNCIL

VI.—(1) (a) No person shall be eligible for election as a member of the Council to represent a general constituency, unless his name is registered on the electoral roll of the constituency, or of any other constituency in the province, and unless, in the case of a non-Muhammadan, Muhammadan, Indian Christian, European or Anglo-Indian constituency, he is himself a non-Muhammadan, Muhammadan, Indian Christian, European or Anglo-Indian, as the case may be.

(b) No person shall be eligible for election as a member of the Council to represent a special constituency, unless his name is registered on the electoral roll of the constituency.

(2) For the purposes of these rules—

- (a) 'general constituency' means a non-Muhammadan, Muhammadan, Indian Christian, European or Anglo-Indian constituency; and
- (b) 'special constituency' means a Landholders', University, Planters', or Commerce and Industry constituency.

## BOMBAY

VI.—(1) No person shall be eligible for election as a member of the Council to represent a general constituency, unless—

- (a) his name is registered on the electoral roll of the constituency or of any other constituency in the province; and

- (b) he has for the period of six months immediately preceding the last date fixed for the nomination of candidates in the constituency, resided in the constituency or in a division any part of which is included in the constituency ;
- (c) in the case of a non-Muhammadan, Muhammadan or European constituency, he is himself a non-Muhammadan, Muhammadan, or European, as the case may be.

Provided that—

- (i) for the purposes of clause (b) the City of Bombay shall be deemed to be a division, and
  - (ii) nothing in clause (b) shall be deemed to render ineligible for election any person who has held office as a Minister within the period of six months referred to in that clause.
- (2) No person shall be eligible for election as a member of the Council to represent a special constituency, unless his name is registered on the electoral roll of the constituency.
- (3) For the purpose of these rules—
- (a) ‘ general constituency ’ means a non-Muhammadan, Muhammadan or European constituency ; and
  - (b) ‘ special constituency ’ means a Landholders’, University, or Commerce and Industry constituency.

#### BENGAL

VI.—(1) (a) No person shall be eligible for election as a member of the Council to represent a general constituency, unless his name is registered on the electoral roll of the constituency, or of any other constituency in the province ; and unless, in the case of a non-Muhammadan, Muhammadan, European or Anglo-Indian constituency, he is himself a non-Muhammadan, Muhammadan, European or Anglo-Indian, as the case may be.

(b) No person shall be eligible for election as a member of the Council to represent a special constituency, unless his name is registered on the electoral roll of the constituency.

(2) For the purpose of these rules—

- (a) ‘ general constituency ’ means a non-Muhammadan, Muhammadan, European or Anglo-Indian constituency ; and
- (b) ‘ special constituency ’ means a Landholders’, University, or Commerce and Industry constituency.

#### UNITED PROVINCES

VI.—(1) (a) No person shall be eligible for election as a member of the Council to represent a general constituency (other than the European constituency), unless his name is registered on the electoral roll of the constituency, or of any other constituency in the province (other than the European constituency).

(b) No person shall be eligible for election as a member of the Council

to represent a special constituency, or the European constituency, unless his name is registered on the electoral roll of the constituency.

(2) For the purposes of these rules—

- (a) 'general constituency' means a non-Muhammadan, Muhammadan or European constituency ;
- (b) 'special constituency' means a Taluqdars', Agra Landholders', University, or Commerce and Industry constituency.

#### PUNJAB

VI.—(1) No person shall be eligible for election as a member of the Council to represent a general constituency, unless—

- (a) his name is registered on the electoral roll of the constituency or of any other constituency in the province ; and
- (b) in the case of a non-Muhammadan, Muhammadan or Sikh constituency, he is himself a non-Muhammadan, Muhammadan or Sikh, as the case may be.

(2) No person shall be eligible for election as a member of the Council to represent a special constituency, unless his name is entered on the electoral roll of the constituency.

(3) For the purposes of these rules—

- (a) 'general constituency' means a non-Muhammadan, Muhammadan, or Sikh constituency ; and
- (b) 'special constituency' means a Landholders', University, Commerce, or Industry constituency.

#### BIHAR AND ORISSA

VI.—(1) (a) No person shall be eligible for election as a member of the Council to represent a general constituency, unless his name is registered on the electoral roll of the constituency, or of any other constituency in the province ; and unless, in the case of a non-Muhammadan, Muhammadan, or European constituency, he is himself a non-Muhammadan, Muhammadan, or European, as the case may be.

(b) No person shall be eligible for election as a member of the Council to represent a special constituency, unless his name is registered on the electoral roll of the constituency.

(2) For the purposes of these rules 'general constituency' means a non-Muhammadan, Muhammadan, or European constituency ;

'Special constituency' means a Landholders', University, Planting, or Mining constituency.

#### CENTRAL PROVINCES

VI.—(1) No person shall be eligible for election as a member of the Council to represent a general constituency, unless—

- (a) his name is registered on the electoral roll of the constituency or of any other constituency in the province, and
- (b) he has a place of residence in a district any part of which is included in the constituency, or, in the case of an urban

- constituency, in any such district or within two miles of the boundary of the constituency, and
- (c) in the case of a non-Muhammadan or a Muhammadan constituency, he is himself a non-Muhammadan or Muhammadan, as the case may be.
- (2) No person shall be eligible for election as a Member of the Council to represent a special constituency unless his name is entered on the electoral roll of the constituency.
- (3) For the purpose of this rule a person shall be deemed to have a place of residence in a constituency if he—
- (i) has actually dwelt in a house, or part of a house, within the constituency for an aggregate period of not less than 180 days during the calendar year preceding that in which the electoral roll for the time being under preparation is first published under these rules ; or
  - (ii) has maintained within the constituency for an aggregate period of not less than 180 days during that year a house, or part of a house, as a dwelling for himself in charge of his dependants or servants, and has visited such house during that year.
- (4) For the purposes of these rules—
- (a) ' general constituency ' means a non-Muhammadan or Muhammadan constituency ; and
  - (b) ' special constituency ' means a Landholders', University, Mining, or Commerce and Industry constituency.

#### ASSAM

VI. A person shall not be eligible for election as a member of the Council to represent—

- (a) the Shillong constituency or a non-Muhammadan or Muhammadan rural constituency (which constituencies are hereinafter in these rules referred to as general constituencies) unless his name is registered on the electoral roll of the constituency or of another constituency in the province ; or
- (b) a Planting, or Commerce and Industry constituency (which constituencies are hereinafter in these rules referred to as special constituencies) unless his name is registered on the electoral roll of the constituency.

#### Rule XI

- (1) Any person may be nominated as a candidate for election in any constituency for which he is eligible for election under these rules.
- (2) The local Government shall appoint for each constituency—
  - (a) a date, not later than the fourteenth day after the date of the notification calling upon the constituency to elect a member, for the nomination of candidates ;
  - (b) a further date, not later than the seventh day after the first-mentioned date, for the scrutiny of nominations ; and

- \* (c) a further date or dates on which a poll shall, if necessary, be taken ;

and the dates so appointed shall be notified in the constituency in such manner as the local Government thinks fit.

(3) On or before the date so appointed for the nomination of candidates each candidate shall, either in person or by his proposer and seconder together, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Returning Officer or to such other person as may be authorized in this behalf by regulation a nomination paper completed in the form prescribed in Schedule II-A and subscribed by the candidate himself as assenting to the nomination and by two persons as proposer and seconder whose names are registered on the electoral roll of the constituency.

(4) Any person whose name is registered on the electoral roll of the constituency, and who is not subject to any disability stated in rule VII, may subscribe, as proposer or seconder, as many nomination papers as there are vacancies to be filled but no more.

(5) Every nomination paper delivered under sub-rule (3) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed or does thereby appoint as his election agent for the election either himself or some one other person who is not disqualified under these rules for the appointment and who shall be named in the declaration ; and no candidate shall be deemed to be duly nominated unless such declaration is delivered along with the nomination paper.

(6) Any nomination paper which is not received before three o'clock in the afternoon on the date appointed by the local Government for the nomination of candidates shall be rejected.

(7) The Returning Officer or other person authorized shall, on receiving a nomination paper under sub-rule (3), inform the person or persons delivering the same of the date, hour and place appointed for the scrutiny of nominations, and shall enter in the nomination paper its serial number and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him ; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions, similar to those contained in the nomination paper, both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder.

(8) Any candidate may withdraw his candidature by notice in writing subscribed by him and delivered to the Returning Officer, or other person authorized, on or before three o'clock in the afternoon on the date succeeding that appointed by the local Government for the scrutiny of nominations. A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be re-nominated as a candidate for the same election.

(9) The Returning Officer or other person authorized shall, on



receiving a notice of withdrawal under sub-rule (8), as soon as may be cause a notice of the withdrawal to be affixed in some conspicuous place in his office.

**XII.**—(1) On or before the date appointed for the nomination of candidates, each candidate shall deposit or cause to be deposited with the Returning Officer the sum of  $\frac{\text{two hundred and fifty}}{\text{five hundred}}$  rupees<sup>1</sup> in cash or in Government Promissory Notes of equal value at the market rate of the day ; and no candidate shall be deemed to be duly nominated unless such deposit has been made.

(2) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made withdraws his candidature in the manner and within the time specified in sub-rule (8) of rule XI, or if the nomination of any such candidate is refused, the deposit shall be returned to the person by whom it was made ; and, if any candidate dies before the commencement of the poll, any such deposit, if made by him, shall be returned to his legal representative or, if not made by the candidate, shall be returned to the person by whom it was made.

(3) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is not elected and the number of votes polled by him does not exceed, in the case of a constituency returning one or two members, one-eighth of the total number of votes polled or, in the case of a constituency returning more than two members, one-eighth of the number of votes polled divided by the number of members to be elected, the deposit shall be forfeited to the Government.

(4) For the purpose of sub-rule (3), the number of votes polled shall be deemed to be the number of ballot papers, other than spoilt ballot papers, counted ; and, where the election is held according to the system of proportional representation by means of the single transferable vote, the number of votes polled by a candidate shall be the number of votes polled by him as first preferences.

(5) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is elected and thereafter his seat is declared vacant under these rules owing to his failure to make the oath or affirmation hereinafter prescribed, the deposit shall be forfeited to the Government.

(6) The deposit made in respect of a candidate who is not elected shall, if it is not forfeited under sub-rule (3), be returned to the candidate or to the person who has made the deposit on his behalf, as the case may be, as soon as may be after the publication of the result of the election in the Gazette ; and the deposit made in respect of a candidate who is elected shall, if it is not forfeited under sub-rule (5), be so returned as soon as may be after the candidate has made the oath or affirmation hereinafter prescribed :

Provided that, if a candidate is duly nominated at a general election in

<sup>1</sup> Five hundred rupees in the case of an election to the Council of State or Legislative Assembly : two hundred and fifty rupees for a Legislative Council.

more than one constituency, not more than one of the deposits made by him or on his behalf shall be returned, and the remainder shall be forfeited to the Government.

**XIII.** If a candidate who has been duly nominated dies after the date appointed for the scrutiny of nominations and before the date appointed for the taking of a poll, the Returning Officer or other authorized person referred to in sub-rule (3) of rule **XI** shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the local Government, and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election :

Provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermanding of the poll.

**XIV.**—(1) If the number of candidates who are duly nominated and who have not withdrawn their candidature in the manner and within the time specified in sub-rule (8) of rule **XI** exceeds that of the vacancies, a poll shall be taken :

<sup>1</sup> Provided that, if a seat is reserved and of such candidates one only is a Mahratta, that candidate shall be declared to be elected, and a poll shall only be taken if any vacancy thereafter remains to be filled.

<sup>2</sup> Provided that, if any seat is reserved and the number among such candidates of non-Brahmans is equal to the number of reserved seats, the non-Brahman candidate or candidates, as the case may be, shall be declared to be elected, and a poll shall only be taken if any vacancy thereafter remains to be filled.

[These provisos do not apply to the Central Legislatures.]

<sup>3</sup> (2) If the number of such candidates is equal to the number of vacancies, all such candidates shall be declared to be duly elected.

(3) If the number of such candidates, if any, is less than the number of vacancies, all such candidates shall be declared to be elected, and the Governor<sup>4</sup> shall, by a notification in the Gazette, call upon the constituency to elect a member or members, as the case may be, within such time as may be prescribed by the notification : provided that where the constituency, having already been called upon under this sub-rule, has failed to elect a member or the requisite number of members, as the case may be, to fill the vacancy or vacancies, the Governor<sup>4</sup> shall not be bound to call again upon the constituency to elect a member or members until such time, if any, as he thinks fit.

<sup>1</sup> In the Bombay rule only.

<sup>2</sup> In the Madras rule only.

<sup>3</sup> In the case of the Punjab and Bihar, the rule is :

12.—(1) If two or more candidates are duly nominated, and have not withdrawn their candidature in the manner and within the time specified in sub-rule (8) of rule **XI**, a poll shall be taken.

(2) If there is only one such candidate, he shall be declared to be duly elected.

<sup>4</sup> In the case of the Central Legislatures for 'Governor' read 'Governor-General', and for 'local Government' read 'the Governor-General in Council'.

(4) Votes shall be given by ballot, and in general constituencies in person :

provided that the local Government<sup>1</sup> may—

- (a) in the case of any specified general constituency or of any specified part of any general constituency, or
- (b) in respect of any person attending at a polling-station in any constituency under the orders of, or under authority from, the Returning Officer of such constituency,

by regulation direct that votes may be given otherwise than in person : provided, further, that no votes shall be received by proxy.

(5)<sup>2</sup> In plural-member constituencies every elector shall have as many votes as there are members to be elected : [but no elector shall give more than one vote to any one candidate].

<sup>3</sup> Provided that in the Presidency and Burdwan (European) constituency the election shall be made according to the principle of proportionate representation by means of the single transferable vote, and votes shall be given in accordance with regulations made in that behalf by the local Government.

(6) Votes shall be counted by, or under the supervision of, the Returning Officer, and each candidate, the election agent of each candidate, and one representative of each candidate authorized in writing by the candidate shall have a right to be present at the time of counting.

(7) When the counting of the votes has been completed, the Returning Officer shall forthwith declare the candidate or candidates, as the case may be, to whom the largest number of votes has been given, to be elected :

<sup>4</sup> Provided that in the Presidency and Burdwan (European) constituency the Returning Officer shall determine the candidates to whom the largest number of votes has been given in accordance with the regulations made in that behalf.

<sup>5</sup> Provided that, if one or more seats are  
a seat is reserved, the Returning

Officer shall first declare to be elected the Non-Brahman  
Mahratta candidate (or candidates as the case may be) <sup>6</sup> to whom the largest number of votes has been given.

(8) Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to

<sup>1</sup> In the case of the Central Legislatures for 'Governor' read 'Governor-General', and for 'local Government' read 'the Governor-General in Council'.

<sup>2</sup> This sub-rule is omitted in Punjab and Bihar Rule.

In the Central Provinces Rules the words 'In the plural-member constituency' are substituted for 'In plural-member constituencies'.

For the words in square brackets the following are substituted in the Bombay Rule, 'and shall be entitled to accumulate all of them upon one candidate or to distribute them amongst the candidates as he pleases'.

<sup>3</sup> In the Bengal Rule only.

<sup>5</sup> In the Madras and  
Bombay Rule only.

<sup>4</sup> In the Bengal Rule only.

<sup>6</sup> In the Madras Rule only.

be declared elected, the determination of the person or persons to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the Returning Officer and in such manner as he may determine.

(9) The Returning Officer shall without delay report the result of the election to the Secretary to the Council,<sup>1</sup> and the name or names of the candidate or candidates elected shall be published in the Gazette.

### *Multiple Elections*

**XVI.**—(1) If any person is elected by a constituency of the Council and by a constituency of either chamber of the Indian legislature, the election of such person to the Council shall be void and the Governor shall call upon the constituency concerned to elect another person.

(2) If any person is elected either by more than one constituency of the Council or by a constituency of the Council and a constituency of the Legislative Council of another province, he shall, by notice in writing signed by him and delivered to the Secretary to the Council or the Secretaries to both Councils, as the case may be, within seven days from the date of the publication of the result of such election in the local official Gazette, choose for which of these constituencies he shall serve, and the choice shall be conclusive.

(3) When any such choice has been made, the Governor shall call upon the constituency or constituencies for which such person has not chosen to serve to elect another person or persons.

(4) If the candidate does not make the choice referred to in sub-rule (2) of this rule, the elections of such person shall be void and the Governor shall call upon the constituency or constituencies concerned to elect another person or persons.

For the Council of State and Legislative Assembly, sub-rules (1) and (2) of rule XVI are given in one sub-rule :

**XVI.**—(1) If any person is elected by more than one constituency, he shall, by notice in writing signed by him and delivered to the Secretary to the Government of India in the Legislative Department within seven days from the date of the publication of the result of such election in the Gazette, choose for which of these constituencies he shall serve, and the choice shall be conclusive.

In the United Kingdom certain persons are incapable of being nominated as candidates by reason of their holding certain offices or positions, as, for example, a priest or deacon in the Church of England, or a minister in the Church of Scotland. The Indian rules are silent on this point. Apparently it is considered that executive instructions will be sufficient. There is also in England a prohibition against

<sup>1</sup> In the case of the Central Legislatures for 'Secretary to Council' read 'the Secretary to the Government of India in the Legislative Department'.

contractors to Government becoming members of Parliament, a leading case being *in re Samuel* (1913), where a member of a firm which entered into contracts for loans and for the purchase of silver for the Secretary of State for India was held to have brought himself within the statute. There is no such prohibition in India, but under sections 63 E and 80 B of the Government of India Act an 'official' is not qualified for election as member of a legislative body. The term 'official' is defined in the Government of India Act, section 134 :

'The expressions "official" and "non-official", where used in relation to any person, mean respectively a person who is or is not in the civil and military service of the Crown in India :

Provided that rules under this Act may provide for the holders of such offices as may be specified in the rules not being treated for the purposes of this Act, or any of them, as officials.'

The following rules have been made :

'The holder of any office in the civil or military service of the Crown, which does not involve both of the following incidents, namely, that the incumbent

(a) is a whole-time servant of the Government, and

(b) is remunerated either by salary or fees, shall not be treated as an official for any of the purposes of the Government of India Act.' (Rule 2 under section 134 of the Government of India Act.)

'If any question arises whether any officer is or is not a whole-time servant of Government for the purposes of rule 2, the decision of the Governor-General shall be final.' (Rule 3 *ibid.*)

The criterion to be applied in such cases would seem to be whether the candidate's employment is such as to leave him independent of Government control.

'Candidate' is defined in rule XXX as meaning :

'A person who has been nominated as a candidate at any election or who claims that he has been so nominated or that his nomination has been improperly refused, and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election.'

It will be seen, therefore, that expenditure incurred before nomination may have to be included in the declaration and return of the election expenses, a matter dealt with at length in a subsequent chapter.

It will be noticed that in the rules there appears to be an important distinction between the qualifications for election in the United Provinces and Assam as compared with the other provinces. In the United Provinces a candidate is eligible for a general constituency (other than the European constituency) if his name is registered on the electoral roll of any other constituency in the province except the European constituency. In the other provinces the candidates' name must be entered on the electoral roll of another constituency situated in the same province of the same communal description as that by which he desires to be elected.

But clause 6 of Schedule II to rule VIII of the electoral rules for the United Provinces (*vide* page 215) dealing with the qualifications of an elector based on community provides that an elector for a Muhammadan constituency must be a Muhammadan, and that a European or Muhammadan elector cannot vote at an election for a non-Muhammadan constituency. See also the proviso to clause 2 of the Assam Schedule II (*vide* page 220.)

Another important difference is the residential qualification of the candidate demanded in the Bombay Presidency and in the Central Provinces. The advantages and disadvantages of a residential qualification have been the subject of several discussions, and the interested reader is referred to the debates in the Legislative Assembly and the Punjab Legislative Council on the subject. In its favour, it may be urged, that it ensures local knowledge and defeats the 'carpet-bagger'. Against this restriction must be set the fact that it may unduly limit candidature and result in the return of a worthy but uneducated rustic, unable to understand, though he may impede, the proceedings in Council. As originally drafted the residential qualification in the Bombay Presidency would probably have rendered it difficult for Ministers, who have of course to remain at Government head-quarters, to seek re-election.

The exclusion in the Central Provinces of the urban constituency from the district or the part thereof forming a rural constituency would prevent any person in the larger towns standing as candidate unless he held land in the interior of the district.

The amendments of 1923, however, have removed some of these disabilities.

In the Punjab the residential qualification has been abandoned. In the Bombay Presidency candidature is now restricted only to an elector who is qualified as an elector in the division. In the Central Provinces residence in a district, 'any part of which is included in the constituency', confers the necessary qualification. The pleader at district head-quarters can therefore now represent his 'mufassal' clients. In Burma the sex disqualification can be removed in accordance with a proviso to rule V.

'If a resolution is passed by the Council, after not less than one month's notice has been given of an intention to move such a resolution, recommending that the sex disqualification mentioned in clause (b) should be removed, the local Government may, with the consent of the Governor, make an order in this behalf providing that no woman shall be disqualified by reason only of her sex from being eligible for election as a member of the Council.'

The amendment to rule V, introduced by sub-rule (4) in 1923, is most important. If a candidate fails to lodge the return of expenses (whether he is eventually elected or not) *within the time and in the manner prescribed* by or under the rules made in that behalf, or if the

return lodged is found to be false in any material particular, both the candidate and his agent shall be ineligible for election for five years from ' the date of such election ', i. e. from the date when the returning officer declares the candidate to be elected. The wording is different from rule XIX, which refers to the ' date of the publication of the result of an election '.

We may note that :

(1) Not only is punctual submission of the return necessary ; it must also be in the form given in Schedule III, which, when read with rule XXI, presupposes the maintenance of *regular* accounts. The matter is dealt with more fully in the chapter dealing with election expenses.

(2) A return which omitted to record expenditure, if incurred in the management or conduct of the election, might be held to be false in a material particular. This might apply to payments made before the candidate was nominated.

(3) If the election agent is working in more than one constituency, he must keep regular books of account ' for each election for which he is appointed an election agent '.

(4) A corrupt intention is not essential. Mere negligence or omission is sufficient to avoid an election.

Under rule XXV the Governor *shall* when a seat is vacated owing to the member's incurring disability order a fresh election. The same applies to the case when a member fails to take his seat. There have been cases of deliberate abstention as a method of marking political displeasure, as, for example, in the case of the Amritsar constituency for the Punjab Legislative Council in 1920. The proviso introduced in 1923 by sub-rule (3) to rule XIV permits the Governor, after ordering one new election, in case of further failure, to allow the recusant constituency to remain unrepresented.

The second disqualification mentioned in rule V (c) does not apply to a candidate for the Central Legislatures. A member (i. e. a person who has already taken the oath as member) of a Legislative Council can stand as candidate at an election for a constituency of the Council of State or Legislative Assembly, but not vice versa. A member of the Legislative Assembly who wishes to enter his provincial Legislative Council must first resign his seat on the Assembly in order to be eligible. There can also be interchange between the two Central Legislative bodies, entailing only the resignation of the member's seat in event of election. The reason for this will be found in section 63 E (2) of the Government of India Act :

' If an elected member of either chamber of the Indian legislature becomes a member of the other chamber, his seat in such first-mentioned chamber shall thereupon become vacant.'

In popular parlance, therefore, a ' member ' can go upstairs but not downstairs. The same idea appears to underlie sub-rule (1) of rule XVI. The Central Legislature takes precedence of a provincial legislature.

In the first general election in India there were many cases of multiple candidature, which were a source of expense and inconvenience. It is probable that the deposit of a sum of Rs. 250, in the case of a Legislative Council, or of Rs. 500 for the Central Legislatures, as a condition precedent to nomination, will discourage the practice. For a candidate can only have the deposit returned in respect of one constituency.

Should a candidate elected for more than one constituency in a provincial legislature fail to notify for which constituency he elects to sit within seven days of the publication of the result of the election in the *Gazette*, he will lose his seat and will not be able at that election to stand as candidate for either of the constituencies. In other words, delay in making the choice involves disqualification. If a member who has already taken the oath as a member of any legislative body constituted under the Act is absent for a period of two consecutive months from India, or unable to attend to the duties of his office, the Governor (or in the case of the Central Legislature, the Governor-General), may declare that the member's seat is vacant.

Before taking steps to secure the nomination of a candidate the election agent will carefully see that the proposed candidate is not subject to any of the disabilities set forth above. It is not within the scope of this work to discuss at all who may or may not be suitable to represent a constituency. In the chapter dealing with organization an indication is given as to possible steps which might be taken previous to a candidate's submitting his name, so as to test his chances of success. And doubtless the election agent or other interested parties will realize that there may be a personal as well as a statutory restriction on candidature. Granted that these do not exist, we come to the important stage of *nomination*.

In the 1920 edition of electoral rules nomination was a matter left to regulations by local Governments, which would also govern the case of the Legislative Assembly and the Council of State constituencies. This is not now the case. The procedure on nomination is provided by rules XI to XIII, the subsequent stages of the scrutiny of nomination, the polling (if there be a contest), the counting of votes and the like being left to regulations under rule XV. This amendment was introduced probably, it would seem, as a result of the election petitions, which arose from difficulties connected with the procedure at nomination. The reader is referred to the following cases: *Attock*, *Ballia*, *Basti*, *West Berar*, *East Punjab*, *Purnea*, *Rohtak*, and *Shahabad*.

In the case of a by-election the 14 days referred to in rule XI (1) would begin to run from the date of the notification in the *Gazette*: in the case of a general election from the date on which the duration of Council would expire, such date being mentioned in the notification.

It will probably be found convenient to fix the nomination day as near the 14th day as possible, in order to give the electors of the



constituency and prospective candidates time to make the necessary arrangements. During this period of 14 days nomination papers can be obtained by any elector from the office of the returning officer for the constituency concerned. The form is given in Schedule II-A to the rules. There is nothing to prevent a nomination paper being written out as a copy of that given in the Schedule, which is as follows :

### SCHEDULE II-A.

(See Rule XI.)

#### *Form of Nomination Paper.*

#### NOMINATION PAPER.

Name of the Constituency for which the candidate  
is nominated . . . . .  
Name of candidate . . . . .  
Father's name . . . . .  
Age . . . . .  
Address . . . . .  
\* Denomination (*state whether non-Muhammadan,  
Muhammadan, Indian Christian, Sikh, Euro-  
pean, or Anglo-Indian*) . . . . .  
Constituency on the electoral roll of which the  
candidate is registered as an elector . . . . .  
<sup>1</sup> No. of the candidate in the electoral roll of the  
constituency in which he is registered as an  
elector . . . . .  
Name of proposer . . . . .  
<sup>1</sup> No. of the proposer in the electoral roll of the  
constituency . . . . .  
Signature of the proposer . . . . .  
Name of the seconder . . . . .  
<sup>1</sup> No. of the seconder in the electoral roll of the  
constituency . . . . .  
Signature of the seconder . . . . .

#### *Declaration by Candidate.*

I hereby declare that I agree to this nomination.

Date . . . . . Signature of Candidate . . . . .

(*To be filled in by the Returning Officer or other authorized person.*)

Serial Number . . .

#### *Certificate of Delivery.*

This nomination paper was delivered to me at my office at (date and  
hour . . . . .).

.....

*Returning Officer or other authorized person.*

<sup>1</sup> Where the electoral roll is subdivided and separate serial numbers are assigned to the electors entered in each subdivision, a description of the subdivision in which the name of the person concerned is entered must also be given here.

\* Not to be entered in the case of a special constituency.

*Certificate of Scrutiny.*

I have scrutinized the eligibility of the candidate, the proposer and seconder, and find that they are respectively qualified to stand for election, to propose, and to second the nomination.

.....

*Returning Officer or other authorized person.*

(N.B.—This nomination paper will not be valid unless it is delivered to the Returning Officer or other person authorized to receive it, at his office before 3 P.M. on ..... 192 .)

Care should be taken in filling up the entries to see that the description of the candidate, the proposer and seconder, is *precisely* the same as that given in the electoral roll. In an election for a general constituency a candidate may be registered on the electoral roll of a constituency other than that for which he stands as candidate, except where any residential qualification is in force. If this is the case the necessary information should be obtained and verified. It is as well if at the time of nomination the candidate can accompany his proposer and seconder. If he cannot be present, these two gentlemen, the proposer and seconder, must go *together* without him. They can go on any day after the issue of the notification calling upon a constituency to elect a member.

‘It is obligatory on a returning officer to receive a nomination paper, relating to the constituency of which he is the returning officer, provided that it is presented to him within the time prescribed. It would be absurd to suppose otherwise, and it has not even been considered necessary by the Legislature to lay down in so many words that a returning officer shall receive such a nomination paper so presented to him: it has indeed been enjoined on him by regulation 8 in the Punjab Government Notification No. 9, dated the 31st July 1920, that, on the receipt of a nomination paper within the time prescribed, he shall enter on it certain particulars, and this he obviously could not do unless he received it. Now the obligation to receive a nomination paper would not be laid upon the returning officer unless the carrying out of this obligation were not material to the election, as it manifestly is. Consequently, the moment a returning officer has improperly and without justification refused to receive a nomination paper sought to be presented to him within the time prescribed, the presumption arises that the result of the election has been materially affected. The improper refusal of a nomination paper by a returning officer is, in our view, so grave an irregularity that this presumption would require the strongest and most conclusive proof for its rebuttal and it lies heavily on the Respondent to rebut the presumption so raised.’ (*Rohtak*, 1, I. E. P., 186.)

The nomination paper must bear the candidate’s signature, which may cause difficulty if the prospective candidate is out of India. This can be met by the candidate leaving behind him before he goes two or three signed nomination papers. In England a candidate can, and not infrequently is, elected to Parliament during his absence abroad, the appointment of the election agent being signed ‘by the candidate

or some other person on his behalf', 46 & 47 Vict., c. 51, sect. 24 (3). The Indian electoral rules contain no such provision. The amendment to rule XI (3) disposes of the points raised in the *West Berar* case (1, I. E. P., 67) as to the manner of delivery of the nomination paper.

A candidate may have several nomination papers, and in some constituencies in England this practice is followed in order to show that the candidate has the support of all classes of society, including local persons of importance and women. But no one may propose or second more than one candidate. An instance of an election being avoided on this account will be found in the *Attock* case (I. E. P., 3, 7, and 22), and of a faulty nomination paper in the *Rohlak* case (I. E. P., 187). An election agent may be the proposer or seconder (*Attock*, I. E. P., 13). The wrong rejection by a returning officer of a valid nomination paper is an irregularity sufficient to void the election (*Shahabad*, I. E. P., 213; see also *Purnea*, I. E. P., 178), and an election petition will lie against such order (*Basti*, I. E. P., 48), but the returning officer cannot be made a party to the proceedings as in England (*Rohlak*, I. E. P., 193).

The nomination is not complete unless the candidate has at the same time delivered a declaration in writing appointing either himself or one other person as election agent, and has deposited the required security. The desirability of appointing an election agent is dealt with at some length in the chapter dealing with the position, duties, and responsibilities of the election agent. It is sufficient here to point out that this sub-rule (5) of rule XI, based on the English practice, is intended to allocate definite responsibility for the conduct of the election, especially with a view to the prevention of any corrupt practices. One person and one only can be appointed: either the candidate himself or a person to whom he can entrust the important task (*Ballia*, I. E. P., 31). A form of the declaration of appointment will be found on the back of the nomination paper.

The candidate is responsible for seeing that his election agent is not disqualified either on account of having committed a corrupt practice or for having failed to lodge the prescribed and true return of election expenses. In England if any candidate is proved 'to have personally engaged at the election to which such petition relates as canvasser or agent for the management of the election any person, knowing that such person has within seven years been found guilty of any corrupt practice by any competent legal tribunal . . . the election of such candidate shall be void' (31 & 32 Vict., c. 125, sect. 44).

This Act, the Parliamentary Elections Act, was passed in 1868 before the position of the election agent was regularized and recognized by statute. It penalized the employment of any person found guilty of corrupt practices as an 'agent or canvasser', a wider prohibition than that now contained in the Indian Electoral Rules. At the same time a candidate in India who is foolish enough to employ, even as

a voluntary unpaid assistant for any purpose connected with the furtherance of his candidature, any one who had earned the censure of an election court, would not only run the risk of being held to have connived at malpractices, but would provoke suspicion. It is perhaps well to emphasize the fact once for all that a candidate's hands cannot be too clean. The danger he runs, as will be seen later, of an election petition is inevitably considerable, and from the outset he should do nothing to increase the risk. This declaration appointing an agent need not be stamped (*West Berar*, I. E. P., 76; *Shahabad*, I. E. P., 214; *East Punjab*, I. E. P., 161).

The returning officer will publish the nominations, and a scrutiny of the same will take place a week later. The procedure during scrutiny is provided by regulations made by the local Government under rule XV. Up to 3 p.m. on the day succeeding that fixed for scrutiny the candidate can withdraw 'by notice in writing' his candidature, when he should also ask for the return of the deposit, if made. He cannot, unless he withdraws within time, obtain a refund of the deposit afterwards, even though he does not prosecute his campaign, and takes no further interest in the election. He will also still remain liable for any corrupt practices committed.

Such withdrawal is final and cannot be reconsidered. The candidate who has withdrawn cannot be renominated for the same election. But he can be nominated originally in respect of one or more constituencies. If he is elected to the Council of State or the Indian Legislative Assembly and also to a seat in a Provincial Legislative Council, the latter election is void. If he is elected for two constituencies to the same Council, he must within seven days from the date of the publication of the result of the election choose for which of the constituencies he will serve. This rule rather anticipates the day when party feeling will run so high that a candidate will stand for two or more constituencies rather than allow the seat to go to the Opposition without a contest.

When a candidate stands for two or more constituencies he can only recover his deposit in respect of one, and must forfeit it in respect of the other constituencies. The deposit must be made to the returning officer at the time of nomination. It will be returned after the result of the election has been declared, unless the candidate fails to obtain one-eighth of the total votes given at the election. In England the forfeit of this security is by no means uncommon. Rule XVIII allows a candidate to revoke the appointment of an election agent by notice in writing, signed by the candidate, and lodged with the returning officer. The notice appointing a new election agent must not be delayed. The revocation of appointment may become necessary if the election agent is found to be incompetent. It should at once be made if he is even suspected of dishonesty.

The candidate should not hesitate to exercise this power of revocation if he considers it necessary to do so in order to show that he

himself took every precaution he could to see that the rules regarding elections were properly obeyed. Unless, however, the interests of probity demand it, the candidate would be well advised to make the best of even an incompetent election agent, as the latter, apart from being able to give information and possibly transfer votes to the other candidate, could probably make it impossible for his principal to lodge a true return of his election expenses.

And though a candidate has every right to expect his election agent to safeguard him against any undesirable consequences of his candidature, the law will not relieve him of any such as may follow on his own personal acts, such as election addresses or public speeches. The position is that the agent may easily damage his candidate, but the latter can also damage himself. It is the duty of the election agent to review all his candidate's speeches and to delete any passages which may lead to trouble. The candidate will always bear in mind the possibility of being a party to an election petition or of having his election expenses challenged. A letter written in haste, a remark hurriedly made in response perhaps to an interruption at a meeting may at a later stage prove very inconvenient.

It probably will not be long before the art of 'heckling' a candidate is developed in India (see also Chapter VII, p. 92). Personal questions are asked. The candidate is requested to state what action he will take under certain conditions, and he must be very circumspect in his answers. A Muhammadan candidate, for example, may be examined as to his attendance at the mosque. In England it was a common custom to ask at a political meeting that questions be submitted in writing at the beginning of the meeting. They were answered at the close after scrutiny behind the scene by experienced persons. A candidate is now, however, expected to answer at once without any notice, a somewhat trying experience to the novice. In India, while at present free from party obligations, the candidate suffers from the disadvantage of having no marked party programme. The literature distributed by various political associations in England gives the candidates on both sides a fair idea of the ground they have to cover. In India, at any rate during the earlier elections, local considerations will probably predominate. In a certain by-election at a seaside place in England one candidate acquired many votes by his industry in learning all that there was to be said on the debatable topic of the size of the mesh of fishing nets. In most cases, however, the election is fought on some general cry such as 'Chinese Slavery' or 'Home Rule for Ireland'. In India the candidate may, under present conditions, find it difficult to evolve any general claim to the elector's support, as the latter is not yet in the position to formulate any mandate. He will, however, be wise, it is suggested, not to promise too much or hold out extravagant hopes which he cannot fulfil. The prizes of political life fall usually to the long stayer, to the person who

is returned again and again. Unredeemed pledges may tend to shorten political life. On the candidate, in fact, lies the very difficult task of educating the electorate to a sense of its own responsibilities and requirements. Assiduous personal canvassing has been proved in the less educated constituencies in the United Kingdom to be the surest means of success. On the information so acquired, whether personally or by his agents, the candidate should be able to construct an election address or make public speeches, which would meet local requirements, without stirring up trouble or indulging in personal invective. It appears probable that in some parts of the country the election issues may be framed on agrarian lines of landlord *v.* tenant. A grave responsibility rests on the candidate to see that in his efforts to obtain a vote he does not cause a general conflagration. It may perhaps be said that the estimation of a candidate will depend even more on the methods he has adopted to obtain his majority than on the number of votes he has received. The risk of religious faction should be removed by the system of communal representation, but the appeal to prejudice is often as irresistible to the politician as it is dangerous.

In future elections the candidates and their election agents will probably take a more active part in the electioneering procedure than is possible at present. But, as has already been observed, the need for mutual assistance is evident. The candidate whose programme consists in being 'agin the Government' will nevertheless find it useful to work in harmony with local officials, such as the collector or the chairman of the municipality: and this he and his agents can do without any surrender of their political convictions.

The following advice is therefore submitted for the consideration of the candidate :

- (i) Choose your election agent carefully : see that he knows the rules and regulations : audit frequently his accounts.
- (ii) Issue printed instructions to all your agents and *canvassers*, telling them clearly what they may *not* do. A presentation copy of Schedule IV of the rules and Chapter IX-A of the Indian Penal Code to each person helping you in your election may save you trouble. The cost of printing such notice or purchasing any booklet on the subject should be shown in your election expenses. Any such notice should bear the name of the printer and publisher.
- (iii) Should any official be so ill-advised as to offer you his personal support, decline it with thanks, and beg him to restrain any display of enthusiasm.
- (iv) While erring on the side of generosity in expenditure, see that *all* such expenditure is legal.
- (v) When writing an election address or preparing a speech, consider how it will sound when read out in open court six months later.

- (vi) Remember that you and your agents are probably being watched : that it is possible traps may be set, as for example if you are offered the loan of a motor car to bring up voters to the poll, on the condition you will pay for petrol and new tyres. **Always bear in mind the possibility of an election petition.**
- (vii) Don't promise too much. To announce your intention of removing the chowkidari tax, or of supplying water free of charge, lays you open to exposure by your rival. He and his election agent, you may be sure, will welcome any opportunity to prove to the electors that you are trying to fool them.
- (viii) Instruct all your agents to give every assistance during the election to the registering or revising officer, the presiding officer at the poll or the returning officer when counting votes.
- (ix) Do as much canvassing as you can yourself, and when so doing inquire carefully regarding the conduct of your agents. If any one of them is found to have been imprudent don't hesitate to disavow him and his action publicly.

Let us suppose that our candidate has obtained sufficient local encouragement to stand : that he has successfully passed the ordeal of the scrutiny of his nomination, has appointed an election agent, paid his deposit, and opened a separate 'election account' with a local bank. His next and immediate duty is to prepare an election address and to arrange for its distribution. This is the advice given in an election manual issued by the Liberal Publication Department :

'Too much consideration cannot be given to this subject. The convictions of the candidate upon matters of public policy should be stated in the briefest form compatible with plain and vigorous expression. With reference to subjects having a peculiar interest to the bulk of the electorate in the constituency he desires to represent, or having an entirely local significance, the candidate would do well to seek the advice of the leading men of his party in the locality and of his election agent. No delay, except such as is demanded by decency in case of death, should be permitted in getting the candidate's address completed and printed. A keen interest is generally taken by the electors in political contests, and the candidate who delays issuing his address may suffer therefrom to an irreparable extent.

The length of an election address should be determined by circumstances. Concise and pithy addresses are, of course, the best ; but a candidate who makes his appearance in the constituency for the first time can properly state his views at greater length than one who has already become known to the electors.'

As to the best method of ensuring that the election address when written will be brought to the notice of the electors, this must depend on the condition of the particular constituency. In backward rural districts, where the number of literates is small, efforts should be made

to obtain the help of one or more persons who will not only publish but explain the address.

It may be of interest to prospective candidates to read specimens of election addresses in England. Three, from an 'independent' Conservative, from a Liberal candidate, and from the 'official' Conservative candidate at the general election in England in 1922 are reproduced below.

For the further development of his campaign the candidate is referred to Chapter VII dealing with organization. It only remains to add that when the candidate appoints himself as his own election agent, he undertakes, in addition to the duties and responsibilities mentioned above, those set forth in the following chapter.

## I

### TO THE ELECTORS OF THE

### ..... PARLIAMENTARY DIVISION OF .....

### GENERAL ELECTION, 15th NOVEMBER 1922.

LADIES AND GENTLEMEN,

On the 12th January 1921, you did me the honour of sending me to the House of Commons by a majority of 3130 over my opponent, the official Candidate of the now defunct Coalition Government.

In that memorable by-election you struck a blow for your own freedom to choose who should be your representative in Parliament.

If, as I venture to hope, I have justified your choice, I respectfully appeal to you to renew your confidence in me on this occasion by recording your votes in my favour on Polling Day, the 15th November.

**The policy I advocate** may be summed up very briefly. It is a policy of which this grand old Country never stood in greater need, viz. :

### PEACE, RETRENCHMENT AND REFORM.

**Peace** with honour at home and abroad. **Retrenchment** of the most rigorous description in **Government Expenditure** in order that the appalling burden of taxation may be quickly lightened, the cost of production and the necessities of life materially reduced, and the grave scandal of one and a half millions of our brothers and sisters being out of employment removed. **Reform** of all those things which, in addition to over-taxation, have interfered with the **Freedom, Prosperity and Happiness** of our people, the recovery of Trade, Industry, and Commerce, and the influence of Britain in the Councils of the World.

I am prepared to support the new Government provided it pursues an active policy calculated to achieve these results, but I place the interests of the Country and my Constituents, as I always have, **before all Party considerations.**

I disagree with the suggestion of the Prime Minister that the **Ministry of Pensions** as such, should cease to exist, and that the administration should be dealt with as a branch of some other department. The whole machinery of the Ministry requires overhauling and simplifying, and the red-tape methods which inflict so much hardship on the pensioners must be removed.



I see grave danger ahead of us, both in **Mesopotamia** and **Palestine**, and—even apart from the large saving of money involved—I strongly advocate a speedy termination of the responsibilities undertaken by the late Government.

I regard the establishment of a **National Home for the Jews** in Palestine, at the expense of the British taxpayer, as a striking instance of the ineptitude of the Coalition administration. Moreover, it involves a breach of faith with our Arab Allies in the Great War.

Our **Naval** and **Military** forces must be maintained at a standard sufficiently high to protect our Trade, our Country, and our Empire.

My views upon such matters as Unemployment, Agriculture, the Licensed Trade and Temperance, Equal Citizenship, the Divorce Laws, German Reparations, and the maintenance of cordial relations with France, are, I think, well known to you.

I regret that in some matters, such as the local Harbour, I have not been afforded an opportunity of using the influence I possessed as your Member, but in every instance where my assistance has been sought in connexion with local affairs, I think I am entitled to state that a large measure of success has attended my efforts.

I renew the pledge I made to you in the by-election, and which I have kept :

**If you send me to the House of Commons I will serve you faithfully and well, and never let you down.**

Yours sincerely,

Committee Rooms,  
6th November 1922.

Printed and Published by the . . . . .

## II

LADIES AND GENTLEMEN,

At the request of the Liberal and Radical Association, I have the honour to offer my services as your representative in the new Parliament.

The downfall of the Coalition gives the electors an opportunity of deciding, in the light of four years' experience, where their confidence shall be placed.

While fully recognizing Mr. Lloyd George's great services to his country, I welcome the collapse of an unnatural and unwholesome alliance.

The Coalition signally failed to redeem the specious promises on which it was returned to power and has left behind it a record of mismanagement, vacillation and extravagance.

For that record the Conservative Party, with Mr. Bonar Law at its head, must bear its full share of responsibility. The Coalition Government depended for its majority in Parliament on Conservative votes. Mr. Bonar Law took a leading part in bringing it into existence, and until ill health unfortunately compelled him to retire in 1921, he was, next only to Mr. Lloyd George, its most powerful member. Similarly, the Government he has just formed is largely composed of Ministers who held office under the Coalition.

It is, therefore, idle to suggest that the Conservative Party comes before the electors with clean hands.

The Liberal Party, on the other hand, has nothing to conceal or to explain away.

The Liberals set their face against the Coalition at the General Election of 1918, and have consistently protested against its conduct of public affairs.

On such vitally important questions as Ireland, Russia, Reparations, and Public Finance, it was they who told the people the truth.

In every instance their advice was received with derision : in every instance it eventually proved to be sound.

I would ask you to bear these facts in mind, and to give your confidence to those who have earned it.

The programme for which I invite your support is as follows :

### **THE LEAGUE OF NATIONS.**

I am a convinced and whole-hearted supporter of the League of Nations, in which I see the only hope of lasting peace and of relief from the burden of armaments.

### **REPARATION.**

I regard a prompt, comprehensive, and final settlement of the Reparations question as indispensable to the peace and prosperity of Europe.

For the sake of such a settlement, we should be prepared, in our own interests, to make large concessions both with regard to Reparations and to the debts due to us from our Allies.

### **ECONOMY.**

I am in favour of the most rigid economy compatible with the discharge of our honourable obligations and with due provision for such essential public services as the education, housing, and health of the people.

Every demand on the public purse should be rigorously scrutinized and superfluous expenditure ruthlessly retrenched.

### **MINISTRY OF PENSIONS.**

The proposed abolition of the Ministry of Pensions at the present stage can effect no substantial saving.

It must, on the other hand, inevitably be to the prejudice of those whose welfare is in the highest degree a matter of public concern.

I regard it, therefore, as a false economy.

### **FREE TRADE.**

I believe unreservedly in Free Trade and in the removal of all artificial obstructions to commerce and industry.

I am in favour of the total and immediate repeal of the Safeguarding of Industries Act.

### **CAPITAL AND LABOUR.**

While I believe that private enterprise is the life-blood of our economic prosperity, I desire to see the relations between Capital and Labour adjusted on a more satisfactory basis.

Labour is entitled to a reasonable minimum standard of wages and conditions of work, to security against the risk of unemployment, and to a fuller partnership in the conduct of industry.

The spirit of antagonism should be replaced, by means of close and regular contact between Capital and Labour in every industry, by the spirit of co-operation in a common enterprise.

### **UNEMPLOYMENT.**

Unemployment can only be dispelled by the revival of trade.

This depends, in turn, on the removal of all artificial obstructions to trade, on the restoration of peace-conditions in Europe and the East and on the reduction of the crushing burden of taxation.

All these ends the Liberal policy is designed to attain.

As temporary palliatives, I am in favour of a wider application of the principle of the Trade Facilities Act, and the execution in times of depression of public works of permanent value.

### **HOUSING.**

Among the measures which can be taken towards the solution of the housing problem are the rating of site-values, which involves the non-rating of improvements, and the provision of better facilities for securing land for public purposes on reasonable terms.

In the present state of the national finances, it is not possible to contemplate the provision of public funds for housing schemes on an heroic scale.

On the other hand, the need is so crying that I am in favour of a limited measure of State support, provided that responsibility is fairly shared by local authorities and that drastic measures are taken against any attempt to create a monopoly in building materials.

### **THE LAND.**

I am in favour of the Rating of Site Values and of measures for giving the town leaseholder security of tenure and relief from oppressive restrictions.

### **AGRICULTURE.**

I desire to see fair play for agriculture and the fuller utilization of the soil.

I am in favour of the revision of the Game Laws, the provision of reasonable rates for the transport of rural produce, and the encouragement of rural credit institutions, co-operative purchasing and marketing, and agricultural research.

I am also in favour of giving agricultural labourers readier access to the soil, of the abolition as speedily as possible of the tied cottage system, and of the settlement of fair wages by Conciliation Boards, whose awards should be strictly enforced.

### **TEMPERANCE.**

I am not in favour of National Prohibition, and I am of opinion that the time is not ripe for Local Veto.

I am in favour of Local Option, in respect of the reduction of licences with fair compensation to well-conducted licensees, the further limitation of hours, and similar restrictions on the liquor traffic, where local opinion definitely demands them.

### **WOMEN'S RIGHTS.**

I am in favour of absolute equality of rights as between the sexes.

### **THE HOUSE OF LORDS.**

I am entirely opposed to any attempt to restore the right of veto to the House of Lords.

The circumstances of the present Election unfortunately make it impossible for me to come into personal contact with every individual voter.

I have, therefore, ventured to set forth my views somewhat fully

in this address, which I would respectfully ask you to accept as a substitute for a personal visit.

I have the honour to be,  
Your obedient servant,

Printed by ..... and published by ..... (Election Agent), 9 Cambridge Terrace, .....

### III

1st November 1922.

*To the Electors of the ... Division of ....*

In accordance with the unanimous wish of the Conservative and Unionist Association I have the honour to submit myself as the Conservative Unionist Candidate for the ... Division of ....

Two years have brought me into close touch with every part of the Constituency. The pleasant relationship that has resulted will, I hope, continue. I have much to be grateful for both in the many individual kindnesses I have received, and the knowledge I have been enabled to gain of the Electors and their special needs.

There will be other opportunities of entering into the details of the policy for which I ask your support, but the following are the main considerations which will guide me.

Above all I stand for peace at Home and Abroad. It is our first foreign interest, and also our first domestic interest. Peace means security and confidence, and these are vitally necessary to the restoration of our national prosperity.

Chiefly for this reason I support Mr. Bonar Law, who has stated that tranquillity and stability at home and abroad are the crying needs of the Nation.

I stand for the maintenance of our national friendship with our former ally France, which I consider essential to the security of Europe.

If I am returned as your Member I shall labour unremittingly for the restoration of the trade and industry of this country. To this end I should strongly support all reasonable proposals for retrenchment in national expenditure, and oppose waste in any form. I am also in favour of the development of trade within the British Commonwealth.

I feel deeply the obligations that the present conditions of national unemployment impose upon every Member of Parliament. The immediate problem of unemployment in the winter calls for emergency measures for its relief. I should, therefore, support the Government in prompt, practical and generous action.

I fully realize the serious results of the present oppressive scale of taxation both to the nation and the individual. I should favour its equitable reduction at the earliest possible opportunity.

I have some personal and practical acquaintance with the present deplorable state of British agriculture, and the problems of the farmer and his men. I can whole-heartedly promise, if elected, to defend and advance the interests of the farming community to the utmost of my energy and ability.

In regard to Ireland, I support the fulfilment in letter and in spirit of our national obligations under the Irish Treaty. At the same time I hold that our honour is involved in maintaining the liberties that have been conferred upon the Parliament of Northern Ireland.

I am opposed to Prohibition and to other vexatious restrictions which,

while interfering with personal liberty, are ineffectual in furthering the cause of temperance.

In my last election address I expressed the hope that the local Coal Fields would be shortly developed. I am pleased to observe that there are now definite indications of this hope being fulfilled, and of a general development of the industrial resources of the constituency.

Since it is impossible in the course of a brief address to deal adequately with all questions of public interest, I should be glad to give my views to any Elector upon any subject with which I have omitted to deal. If you return me to Parliament I shall generally support the Government of which Mr. Bonar Law is now the head, but I reserve to myself the right to vote against the Government in any case where I think their proposals are not in the best interests of the Nation.

In the hope that you will give me your support and vote.

I remain,

Yours faithfully,

Printed by ..... and published by ..... (Election Agent), 2 Cambridge Terrace, .....

## CHAPTER V

### THE ELECTION AGENT

#### *Disqualification for being Election Agent*

**XVII.** No person shall be appointed an election agent who is himself ineligible for election as being subject to any disqualification mentioned in sub-rule (3) or sub-rule (4) of Rule V.

**XVIII.**—(1) The appointment of an election agent, whether the election agent be appointed by the candidate himself or not, may only be revoked in a writing signed by the candidate and lodged with the officer receiving nominations, and shall operate from the date on which it is so lodged.

(2) In the event of such a revocation, or of the death of any election agent, whether such event occurs before, during, or after the election, then the candidate shall appoint forthwith another election agent and declare his name in writing to the said officer.

#### *Accounts of Agents*

**XXI.** Every election agent shall keep regular books of account in which the particulars of all expenditure of the nature referred to in Rule XIX shall be entered, whether such expenditure is incurred by the candidate or by the election agent or by any person under the direction of the candidate or the election agent.

#### *Liability of Agent*

### CHAPTER IX A: INDIAN PENAL CODE

**171 I.** Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connexion with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

**171 H.** Whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

It may at first sight seem curious that a candidate should, as laid down in rule XI (5)<sup>1</sup> of the revised and consolidated rules relating to

<sup>1</sup> Vide p. 29 *supra*.

Provincial Legislative Councils, the Legislative Assembly, and the Council of State, be *compelled* to appoint either himself or one other duly qualified person as his 'election agent'.

This statutory appointment has been long recognized in England. The object of it is twofold : first, to allocate responsibility ; secondly, to control expenditure. The rule as proposed in India does not quite follow the lines of the Corrupt and Illegal Practices Prevention Act of 1883, where section 24 lays down that one election agent only shall be appointed for each candidate, and the returning officer is to 'forthwith give public notice of the name and address of every election agent so declared'. Before detailing his duties and seeing how best they may be discharged in India, a short historical survey of the evolution of this office may be of interest.<sup>1</sup> As long ago as 1696 the Election Act (7 & 8 Will. III, c. 4) mentioned 'the excessive and exorbitant expenses contrary to the laws and in violation of the freedom due to the election of representatives for the Commons of England in Parliament, to the great scandal of the kingdom, dishonourable and may be destructive to the constitution of Parliaments'. Various attempts were made to curtail expenditure. Eventually an independent third person was appointed under the title of 'election auditor', through whose hands all moneys spent on elections were to pass, and who had to publish accounts of all such expenditure.

It was soon found that mere publication and audit did not either curtail expenditure or remove malpractices. The auditor could not prevent the candidate from spending money : his powers were restricted to incurring such expenditure as the candidate authorized, and to publish such amounts as the latter thought fit to divulge. The next stage was, therefore, the appointment of one or more persons as 'Expenses Agents'. They alone could make payments and were expected to know what expenses were legal, illegal or corrupt, and were with the candidate personally liable. Each general election and also several municipal elections resulted in petitions which disclosed further malpractices, and hence eventually was evolved the present system now transplanted in part to India by which one, *and only one* (*Ballia*, I. E. P., 31), expert in the law of elections is to be nominated by the candidate to manage all his business before, during, and after the election so far as it may relate to the conduct of the election or the return of the candidate. The candidate may prefer to be his own election agent, and if so must declare himself as such. This appointment is in fact the king-pin of the electoral machinery, and in connexion with its duties there have been many judicial pronouncements. Thus Field, J., in *Barrow-in-Furness* (1886) :<sup>2</sup>

'The object of the Act is, that a person shall be the election agent, who shall be effectively responsible for all the acts done in procuring the

<sup>1</sup> See Chapter V : Rogers on Elections, vol. ii (p. 192, nineteenth edition).

<sup>2</sup> 4, O'M. & H., 82.

election. He is to hire the polling clerks : that is a distinct and positive enactment. He is to hire everybody ; no man is to be paid money by anybody that does not pass through his hands. No contract is to be made by anybody but him ; he is the person to make the contract, because he is a known and a responsible man who can be dealt with afterwards, and who can be looked to afterwards for an explanation of his conduct in the management of the election. It is not to be left, says the legislature, to uncertain bodies of people, to floating committees, or bodies of that sort, or even to a series of inferior people, who we know in the former days of elections were called managers, and people of various descriptions and denominations and whose acts no one would be responsible for or know anything at all about. The object of the Act was, it seems to me, that the affairs of the election should be carried on in the light of day, and that a respectable and responsible man, responsible to the candidate and to the public, should be there to do all that was necessary.'

Election agents appointed in India will do well also to bear in mind the advice given by Cave, J., in *Stepney* (1892) :<sup>1</sup>

'He ought to keep a cash-book, in which everything should be set down in chronological order, so that it can be told by looking at the cash-book exactly when such sum was spent, how it was spent, and to whom it was given. He would be well advised also if he had an order-book with counterfoils, which should be numbered consecutively, and wrote down every order upon the form and upon the counterfoil, so that by an inspection of the book one could at once see that all the counterfoils were there, and that everything that had been ordered was put down in its place, and on the counterfoil that belonged to it. Lastly, he would be wise to have a receipt-book made up in a similar form, and to take a receipt from the persons to whom he pays any money, upon one of these forms, using them also again consecutively and in chronological order. When a man has got those documents he can come with confidence before an election tribunal and say : 'Those books represent everything I have ordered, everything I have spent, everything I have paid.'

Schedule III to the rules gives the heads of receipts and expenditure, the manner in which they are to be returned, and the form of affidavit that is to accompany the statement.

Rule XXI, it may be observed, refers to *regular* books of account, in which must be entered *all* expenditure, whether incurred by (a) the candidate himself (personal expenses), (b) the election agent, or (c) any person 'under the direction' of the candidate or election agent.

Few candidates in England are their own election agents. The majority employ one person, in whose hands they leave the details of organization and various troublesome duties, to be specified hereafter, which cannot be delegated except to a declared election agent.

Parker's *Election Agent and Returning Officer* has the following remarks :

'If the candidate name himself as his own election agent, he retains complete control over the expenditure and proceedings of the election, and will only have himself to blame for any error on the part of the

<sup>1</sup> Day's Election Cases, 99.



election agent. But, as by naming himself, he adds to the liabilities of the candidate, already sufficiently numerous, the liabilities peculiar to the election agent, and thereby renders himself subject not only to the provisions of the Act which apply to the candidate, but also to those which apply exclusively to the election agent (C. I. P. P. A., s. 24, sub. 2)—a candidate rarely avails himself of this power, or departs from the usual course of employing a separate individual as election agent. Moreover, if a candidate undertakes to regulate the expenditure himself, and some of the money given out by him is corruptly expended, it is much less easy for him to prove that such expenditure was without his knowledge and against his consent than if he had appointed a separate election agent, the election judges may find themselves compelled to report that he was cognizant of the corruption in question (*Cashel*, 1, O'M. & H., 288), and he deprives himself of one of the grounds on which his election may be saved and incapacities avoided. (Parker's *Election Agent and Returning Officer*, 3rd ed., p. 4).

Similarly *Rogers on Elections*, vol. ii (19th ed., p. 196) :

‘ A candidate may name himself as election agent, and thereupon is, so far as circumstances admit, to be subject to the provisions of the Act both as a candidate and as an election agent, and any reference in the Act to an election agent is to be construed to refer to the candidate acting in his capacity of election agent : sub-section (2).

This is an entirely new provision, and if acted upon extensively some nice questions may have to be settled as to the relations of candidate-agents and their sub-agents. On the one hand the relation is one which would naturally raise a stronger presumption of knowledge on the part of the candidate of any corrupt or illegal practices committed by his sub-agents, and on the other the candidate would, in addition to saving the expense of the agent's remuneration, obtain far more control over the general conduct of the election than would otherwise be possible. On the whole, however, it would seem to be undesirable for a candidate to act as his own election agent.’

Lastly, in Woodings's *Election Manual* (p. 9) we read :

‘ The first matter which claims the attention of a candidate when an election is expected is the appointment of an election agent, unless, indeed, he unwisely intends to act as his own agent.’

There is good reason for this unanimity of opinion, and there is every reason to believe that in this matter India will in due course follow the procedure in England, and that the candidate who appoints an election agent, and is thus freed from all numerous petty details, will have a marked advantage over the candidate who tries to combine the duties of candidate and agent. It is obvious that the candidate should have time to visit his constituents, address meetings, and grant interviews. He will find that the maintenance of the record of expenses, his own and his sub-agents, the correspondence involved in a contested election, and the arrangements for the electoral campaign will demand so much of his time as to leave him little leisure for the more important work of educating the electorate.

Lastly, he will have to take on himself the odium which attaches to the personal refusal of requests, such as, for example, requests for employment, instead of leaving his election agent to deal with disappointed place-hunters. 'The candidate should refer all matters relating to the management of the election to his agent. He will be the mark of all manner of folk. Numbers will seek employment. Others will make startling proposals which involve expenditure. As a set-off an ardent politician may contribute a practical and welcome suggestion.' The candidate should refer all such details to the election agent, or confer with him thereon. An election agent undoubtedly adds to the dignity and comfort of a candidate. Assuming, however, that there will be candidates who still prefer to keep everything in their own hands, it will be understood that in this chapter all that is said regarding the election agent applies to the candidate who declares himself as such. It is impossible for any man, however hard-working and active, to run an election unassisted: he must have helpers, paid or voluntary, and the question is therefore whether he prefers to have one definite agent recognized by the law, to render an account of any malpractices: 'who can, if necessary, be sued, and who shall be endowed with sufficient authority to enable him to act up to the measure of his responsibility' (Powell's *Management of Elections*, p. 4). Though a candidate is not relieved of all responsibilities by the appointment of an election agent, he shares and to that extent reduces by delegation his responsibility, and is perhaps in a better position to show that he did not connive at malpractices but 'took all reasonable means for preventing the continuance of corrupt practices' (rule XLIV (2) (a) and (b)). Vaughan Williams, J. (in *Hexham* (1892), 4, O'M. & H., 150), said:

'In my opinion the candidate has not fully performed his duties who has failed to take all reasonable means of securing that those whom he appointed as agents have not been and shall not be guilty of corrupt or illegal practices.'

Few will dispute the fact that a candidate with a careful and honest election agent to attend to all payments, all arrangements for meetings, to the organization of canvassers, the borrowing of vehicles, and the like will be in a better position to prove bona fide ignorance of any corrupt practice than the candidate who is the sole custodian of his own interests. The fact that there was an election agent who should have detected or prevented certain expenditure may enable the Election Court to come to a finding under rule XLIV (2) (a) and (b), since that sub-rule (2) refers to the action of 'agents' only, and allows the commissioners to exculpate the innocent candidate or election agent. 'It enables the court to make a report by which the candidate keeps his seat while leaving the offenders liable to the consequences of their own acts' (Parker, p. 754). A candidate cannot declare a number of persons to be his agents, though the same person may act as election

agent for two or more candidates (rule XXI). He can only declare one individual or himself as 'election agent' (*Ballia*, I. E. P., 31). But all whom the candidate may employ to assist him in the correct management of his election will be 'agents'. The English statute (C. I. P. P. A., section 25, and schedule I) recognizes 'deputies' of the election agent to act within different polling districts. Such 'deputies' are in this Act referred to as sub-agents'. The number that may be appointed as *paid* sub-agents in England is strictly limited, and no doubt eventually similar restrictions will be imposed in India by the Governor-General in Council under rule XX (1) (b).

The Indian electoral rules contain no reference to the sub-agent, but do recognize the existence of 'agents' other than the election agent. The Governor-General in Council under rule XX (1) (b) may 'prescribe the number and description of persons who may be employed for payment in connexion with any election held under these rules'. Agent is defined in rule XXX as including 'an election agent and any person who is held by the Commissioners to have acted as an agent in connexion with an election with the knowledge or consent of the candidate'.

Rule XLIV (2) refers to a report by an Election Court that a returned candidate has been guilty 'by an agent (other than his election agent)' of any minor corrupt practice, when the election need not be avoided, if the candidate and his election agent were themselves innocent of any such malpractices and took all reasonable pains to prevent their commission.

Under rule XLVII the Commissioners at an election inquiry are to record in their report 'a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent'. Finally schedule IV refers throughout, except Part II, 6, to an 'agent'. The candidate therefore who prefers to assume the burden of work which would more advisedly, it is submitted, be carried by an election agent, does not thereby escape

'the principle which gives the law its real security and which is said to make it formidable even to an innocent candidate, the principle by which the Court determines who are the agents of the candidate.' (Jelf, *The Corrupt and Illegal Practices Acts*, at page 48.)

Before, therefore, detailing the duties and responsibilities of the election agent as laid down by the rules, it will be well to discuss the general question of agency as applied to elections.

Mr. Powell, in the work cited above, gives what he calls 'a good working knowledge of the "drift" of the doctrine' in England:

'The ordinary legal agency may be created in four ways: (1) By express contract, (2) by implication, (3) from necessity, and (4) by ratification. Agency by express contract is the kind of agency which

exists in the case of the election agent and his staff where there is an explicit and specific engagement. Agency by implication is that which is created, for instance, when a coachman, who has the care of his master's horses, is understood to possess authority to order corn for them as his master's agent. Agency by necessity has no application to election work, so that the special doctrine of agency, as applied to elections, is a modification, by way of extension, of agency by implication and agency by ratification. For instance, assuming for the moment that an action (based upon the alleged existence of agency in the ordinary sense) would lie for the recovery of money laid out in bribery at the alleged request of defendant, a candidate, the main question would be whether, in fact, the defendant had authorized the laying out of the money. If it could be shown that the person who had paid the bribes, though, in fact, he was an agent of the defendant, had in this instance been expressly prohibited from laying out money in that way (and especially if the persons who received it were well aware of the prohibition), the action to recover it from the candidate would fail. But as regards the agency in the election sense, the question would be totally different. The proof of general agency (i. e. of agency in the ordinary legal sense) would render abortive any protection that was sought in the express prohibition of the corrupt acts, however honest that prohibition might have been. The corrupt acts of the agent, though forbidden by the candidate, would, if within the very liberally defined scope of his authority, be fatal to his candidature.

In the ordinary sense of the word, a man cannot easily make another his agent without having his eyes fully open to what he is doing. But he may create an agent in the election sense of the word without being conscious of what is being done and, in fact, in such a manner that when the person is ultimately decided to be his agent nobody is more astonished than himself. The reason for this wide difference between common law agency and agency in the election sense was stated in the *Gloucester* petition (1873 : 2, O'M. & H., 59) to be that where any corruption is intended the candidate is most carefully kept in intentional ignorance of it. In the *Wigan* case (1881 : 4, O'M. & H., 11) it was said that the position of the candidate in the election sense was analogous to that of a man who buys a yacht to race in his name and finds a captain and crew on board. The fact that he consents to sail with them makes them his agents for the purpose of sailing the race in accordance with the laws of the course. The fact is that in the ordinary relations of life a man has very large powers of control over his agents and knows, or can with reasonable diligence discover, who they are. But in the conduct of an election his political fate may be jeopardised by persons over whose actions he has little or no control, like the tradesman who canvassed a street with him and then proceeded to the nearest public-house and called for "drinks all round and the health of the candidate". Even if they act in defiance of his orders, where he has power to give them, or do the wrongful act maliciously, with the intention of injuring him, or are totally unknown to him, yet still he may find that they are held to be his agents. This question, whether A is or is not the agent of B at a certain election is of no great moment while the contest proceeds. But when the contest is over and the electors have delivered their verdict it may become of very great consequence indeed. For then it becomes possible for an appeal to be made from the electorate to an election petition court, whose judgment, possibly setting aside that of the electorate, may be very

largely based upon the individual opinions of two judges with regard to the nebulous doctrine of agency in the election sense. The result may be that the candidate is exposed to the risk of the very severest penalties, not because he himself has done anything wrong, but because in the opinion of the judges, some person over whom neither candidate nor constituents had any control has been guilty of a breach of election law. These considerations should make it clear how vast the sweep of this election doctrine of agency is.'

Mr. Powell goes on to quote the language of Mr. Justice Channell in the *Great Yarmouth* case (1906 : 5, O'M. & H., 178). The learned judge said that the

'substance of the principle of agency is that if a man is employed at the election to get you votes, or if, without being employed, he is authorized to get you votes, or if, although neither employed nor authorized, he does to your knowledge get you votes, and you accept what he has done and adopt it, then he becomes a person for whose acts you are responsible in the sense that, if his acts have been of an illegal character, you cannot retain the benefit which those illegal acts have helped to procure for you. That is, as I apprehend, clearly established law. It is hard upon candidates in one sense, because it makes them responsible for acts which are not only not in accordance with their wish, but which are directly contrary to it.'

It is not unlikely that the same principles will be adopted by Election Courts in India.

Apart, however, from paid agents and servants a candidate may, and in England Labour candidates do very largely, depend on unpaid or voluntary agents. It has been held, for example, that a person who has been bona fide employed as private secretary for a candidate for a considerable time before an election will not, if he acts as election agent without additional remuneration, thereby become a paid election agent whose remuneration should be declared as election expenses. If, however, he is employed and paid as private secretary 'colourably' only, whereas he is really retained for political work and to act as election agent when required, he is a paid election agent. The payment of expenses or the supply of food and refreshment to an agent would deprive the latter's services of their honorary character.

Candidates in India will be well advised to be most circumspect in their choice of their election agent. The zamindar who appoints a tahsildar or patwari in his regular employ as his sub-agent for that tahsil thereby encourages his rival to impugn his election on the ground of undue influence. In the matter of accepting voluntary assistance too he should be cautious. The wise candidate will always have an eye on the possible election petition that may be filed, and will remember that though the law of agency at elections has yet to be defined in India, it will not improbably follow that of the country from whence this democratic institution has been borrowed, and may quite conceivably assume the shape laid down by Mellor, J., in *Barnstaple* (1874):<sup>1</sup>

'I quite think the election law is a cruel and somewhat hard law, yet

<sup>1</sup> 2, O'M. & H., 105.

it is too well settled for an election judge to act contrary to it. I say that if an agent, although he may be no agent to the candidate, be employed by the agent of a candidate, he is a sort of subordinate agent ; and if he is employed by persons who have authority to employ people to further the election of a particular individual, and in the course of canvassing makes use of a threat or a promise, such an act will make the candidate liable, however innocent the candidate may be, or however careful the candidate may have been, to avoid such conduct.'

A later case, *Pontefract* (1893),<sup>1</sup> illustrates the dangers that attend the well meaning efforts of voluntary workers. There an agent of the candidate, utterly without the candidate's knowledge, sent a voter by post five shillings, which was more than enough to pay the railway fare there and back, and he also paid him another five shillings after voting.

Sir Henry Hawkins (afterwards Lord Brampton) said :

' One cannot help it : one must deal with the facts as one feels they ought to be dealt with, and much as I regret it, I am bound to come to the conclusion that the member must lose his seat. He owes his disagreeable position entirely to the corrupt act of a person who, unfortunately, had been constituted his legal agent. No imputation of any sort or kind rests upon him.'

And Cave, J., said that he ' to some extent shared the regret expressed by his brother '. It is for the candidate's election agent to select suitable and reliable assistants, and to discourage any one whom he cannot trust implicitly from any form of interference with the voters. As stated in *North Louth* (1911):<sup>2</sup>

' In his own interest the candidate should further remember that to his election agent, he, to a great extent, entrusts his fortune, his position, and his character ; and that any laches, ignorance, or carelessness on the part of his agent may lead to the most disastrous consequences. It is thus of paramount necessity that the person selected as election agent should be a person of position and responsibility, of business habits, of experience in the conduct of elections, intimately conversant with election law, and of sufficient strength and force of character, not only to resist all invitations or attempts to commit any corrupt, illegal, or improper practice but firmly and effectually to put a stop at the outset to the prosecution of any designs which are in disregard either of the spirit or the letter of the law. There is no position that requires more strength, experience and good sense than that of an election agent.'

The same principles should guide the election agent when he accepts any help from other people. It is essential that *all* workers should be under his control and guidance, subject to any special or general instructions issued by the candidate.

A candidate will of course in the majority of cases have come before his constituency at a period considerably earlier than the date of nomination. He may have utilized the services of the person whom subsequently he declares to be his election agent some weeks or

<sup>1</sup> Day's Election Cases, 131.

<sup>2</sup> 6, O'M. & H., pp. 103 to 178. The whole case deserves careful perusal.

months before the declaration is made. He should be careful to include in the return of election expenses under rule XIX and schedule III any items of expenditure incurred during that period for the furtherance of his candidature. The matter will be discussed more fully when we deal with election expenses in Chapter VI. Meanwhile it may be noted that should any person other than the candidate (or his election agent) have incurred any expenditure in the conduct and management of election prior to the date of nomination, the wisest course for the candidate to adopt would be to take over the payment of such charges himself, unless they are objectionable as being illegal, in which event he should of course repudiate them.

The reason for this advice is to be found in section 171 H of Chapter IX A of the Indian Penal Code, which makes illegal payments in connexion with an election 'without the general or special authority in writing of a candidate'. Such authority could of course be given by the candidate to his election agent before his formal appointment, in which event all sums disbursed by the latter would naturally be included in the return.

The remuneration of an election agent in England is fixed at £75 for a county (i. e. mufassal) and £50 for a borough (or town) election *plus* whatever else the candidate may like to give him, subject to the condition that anything over the sum named must be shown as election expenditure, and reduces the balance, since the total sum that may be spent is limited according to the number of voters, available for other purposes. As a matter of fact in actual practice many election agents get considerably more. A standard work, Parker's *Election Agent and Returning Officer*, points out that

'it is, however, improbable that any election agent of experience or position would accept office on such terms, where the circumstances are such as to justify a fee substantially in excess of £75 (or £50), nor does it seem reasonable that the man upon whom, above all others, the success or failure of the election depends should thus take his chance of losing a substantial part of the reward for his labour.'

The election agent in England is not infrequently a solicitor. Sub-agents, clerks, and messengers may be paid 'a reasonable amount', but it should be remembered that any refreshment may, following rulings in England, be held to be equivalent to payment, and the value of such should be included in any return showing remuneration paid.

It is wise for the candidate and election agent to reduce the terms of the agreement (which should be stamped) to writing. It is perhaps unnecessary to add that the remuneration cannot in any way be made to depend on the result of the candidate's success at the election.

Any person may be appointed as election agent provided he has not within the previous five years been declared by any competent tribunal guilty of any corrupt practice. If such a person were engaged it would of course be impossible to repudiate his agency, and the election would

be declared void. The penalty is the same if the candidate personally engages such a person in any capacity connected with the management of the election, even though he be not a paid agent.

The list of authorities quoted at the commencement of this book will give the election agent the necessary material. The *main* duty of an election agent, and indeed of the candidate, is to prevent corrupt practices, to control and account for all expenditure.

The other duties of an election agent may be summarized as follows :

1. To authorize and make, at recognized offices of himself and his sub-agents, such payments as can legally be made (Sch. IV, Part I 5 and Part II 6).

2. To appoint and instruct every sub-agent and polling agent, every clerk and messenger on reasonable rates of pay, and to inform the returning officer and the public of the appointments of sub-agents.

3. To control both paid and voluntary assistance, and to see that the rules for elections are strictly observed (Section 171 H, Chapter IX A, I. P. C.).

4. To arrange for committee rooms and public meetings (Sch. IV, Part II, 7).

5. To check the register of voters, to see that the description of voters is accurate, and to arrange a satisfactory method of identification.

6. To arrange for canvassing, and later on for facilities to enable the voters to get to the poll.

7. By his polling agents to give voters every assistance at the poll : to challenge any cases where he has bona fide reason to believe there is personation.

8. To keep regular and careful accounts and submit same with vouchers to the returning officer according to Schedule III within 35 days from the date of the publication of the result of an election under sub-rule (9) of rule XIV (rule XIX (1)).

9. To arrange for the drafting and issue of election addresses and electioneering literature, including such replies as may seem necessary to any addresses or literature issued by an opponent.

10. If unhappily necessary to maintain or defend an election petition.

Immediately on the election agent's appointment being made, it is a wise and prudent step to placard and advertise a notice, signed by the candidate, notifying the appointment of his election agent and the address of his office ; that all payments and contracts relating to the election must be made through such election agent ; and that he, the candidate, has authorized, and will authorize, no other person to enter into any contract, or to make or receive any payment on his behalf, and that no expenses on account of holding any public meetings, &c., must be incurred by any person unless authorized in writing to do so by the election agent.



The following form is suggested by Parker :

ELECTION FOR . . . . . CONSTITUENCY.

*Notice of appointment of Election Agent.*

I, A. B., of . . . a candidate at the above election, hereby give notice that I have appointed G. H. of . . . to be my election agent, and that the address of his office at which all claims, notices, and documents may be delivered is . . . . And I hereby Further Give Notice that all contracts and payments on account of or in respect of the conduct or management of my election must be made with, by, or through my said Election Agent, and no expenses must be *incurred* on account of holding any public meetings or issuing advertisements, circulars or publications for the purpose of promoting or procuring my election without the authority in writing of my said Election Agent. And that I have authorized, and will authorize, no other person to enter into any contract, or to make or receive any payment on my behalf.

Dated this day of . . . . . 19 .

A. B.

Printed and published by W. X., of . . . . .

It is also wise for the election agent to give public notice of the sub-agents' names and to send a copy to the returning officer. The object of this is to facilitate repudiation of charges of illegal expenditure or illegal employment, and also to limit the responsibility for acts done by 'agents'. If A does something for which there was a formally constituted and notified agent B, the candidate is in a strong position to decline any responsibility for the actions of A, and to prove that by the appointment of B he 'took all reasonable means for preventing the commission of corrupt practices', or that such practices 'were committed contrary to the orders and without the connivance of such candidate or his election agent' (rule XLIV (2) (a) and (b)).

The following is suggested as a form :

ELECTION FOR . . . . . CONSTITUENCY.

*Notice by Election Agent of Sub-agents' Names and Offices.*

I hereby give notice that the names and addresses of the sub-agents of the candidates' election agents at this election, and the addresses of the offices or places of such sub-agents at which all claims, notices, and documents addressed to them may be sent, have respectively been declared in writing to me as follows :

<i>Name and address of sub-agents.</i>	<i>Polling District to which appointed.</i>	<i>Address of office.</i>	
M. N., of			As sub-agent of G. H., election agent of A. B., Esq.
O. P., of			

Dated this day of . . . . . 19 .

Y. Z.

*Election Agent.*

Printed and published by W. X., of . . . . .

If there is any paper published in the constituency these notices might together with the appointment of an agent with advantage be published as advertisements. The same applies to any notice of revocation.

The instruction of sub-agents as polling (or personation) agents is a very important part of an election agent's duty.

The various political organizations in England issue pamphlets for the instruction of sub-agents, which tell them not only what they are to do but what they are to avoid, and include a summary of election offences.

The appointment of a sub-agent, whether he is a voluntary worker or not, might with advantage be made in writing.

A more detailed explanation of the duties of the election agent and his sub-agents will be found in the succeeding chapters dealing with 'Election Expenses' and 'Organization'.

It must not be thought, however, that the employment of an election agent will in itself relieve the candidate of all responsibility. It is the duty of a candidate to see that his election agent is a man in whom not only he himself but also the public can have confidence. In a recent case arising from the general election in England in 1922, a candidate applied in the King's Bench Division for certain 'relief' under the Corrupt Practices Act of 1883. The following report of the proceedings appeared in the Press :

'It appeared that the candidate had been unable to submit his return of election expenses owing to the lapses of his agent. During the reading of the agent's affidavit the judge remarked that the man was unqualified. "I don't want to use any harsh words about the agent," added his Lordship, "but how could he accept a post for which he is not qualified? You may as well go into the street and ask a dustman to cut off your leg." Giving judgment his Lordship said he could not help feeling regret for the candidate in the matter as he was satisfied that he had acted in good faith. An election agent was not bound to know every syllable of the election law, which was complicated, but he should not be entirely ignorant of it.'

## CHAPTER VI

### ELECTION EXPENSES

#### Rule XIX

#### *Return of Election Expenses*

(1) Within thirty-five days from the date of the publication of the result of an election under sub-rule (9) of rule XIV, there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate for the election a return in such form as the local Government may by regulation prescribe of the election expenses of such person containing the particulars specified in Schedule III and signed both by the candidate and by his election agent.

(2) Every such return shall contain a statement of all payments made by the candidate or by his election agent or by any persons on behalf of the candidate or in his interests for expenses incurred on account of, or in respect of, the conduct and management of the election, and further a statement of all unpaid claims in respect of such expenses of which he or his election agent is aware.

(3) The return shall be accompanied by declarations by the candidate and his election agent which shall be in the form contained in Schedule III, and shall be made on oath or affirmation before a Magistrate.

(4) Notwithstanding anything hereinbefore contained, where a candidate is, owing to absence from India, unable to sign the return of election expenses and to make the declaration within the period prescribed in this rule, the return shall be signed and lodged by the election agent only and shall be accompanied by a declaration by the election agent under sub-rule (3), and within fourteen days after the return of the candidate to India he shall cause to be lodged with the Returning Officer a declaration made on oath or affirmation before a Magistrate in the special form for the purpose contained in the said Schedule.

(5) When any return and the declarations made in respect thereof have been lodged with the Returning Officer, the Returning Officer shall, as soon as may be, cause a notice of the date on which the return and declarations in question have been lodged, and of the time and place at which they can be inspected, to be fixed in some conspicuous place in his office and to be published in the local official Gazette, and any person shall, on payment of a fee of one rupee, be entitled to inspect any such return or declaration and, on payment of such fee as the local Government may prescribe, to obtain a copy or copies thereof or of any part thereof.

(6) The Governor-General in Council shall cause to be prepared in such manner, and maintained for such time, as he may direct, a record showing the names of all candidates at every election under these rules and the name of the election agent of each such candidate, and the date on which the return of election expenses of each candidate has been lodged with the Returning Officer.

XX.—(1) The Governor-General in Council may, by notification in the Gazette—

- (a) fix maximum scales of election expenses, which shall be applicable to any election held after the first elections under these rules ; and
- (b) prescribe the numbers and descriptions of persons who may be employed for payment in connexion with any election held under these rules.

(2) Any notification issued under these rules may make different provisions for different constituencies.

For rule XXI see Chapter V : also for sections 171 H and 171 I of Chapter IX A, Indian Penal Code.

### *Presentation of the Petition*

XXXII.—An election petition against any returned candidate may be presented to the Governor by any candidate or elector within fourteen days from the date on which the return of the election expenses of the returned candidate and the declarations, referred to in rule XIX, are received by the Returning Officer.

## SCHEDULE III

(See Rule XIX)

### RETURN OF ELECTION EXPENSES

1. Under the head of receipts there shall be shown the name and description of every person (including the candidate), club, society or association from whom any money, security or equivalent of money was received in respect of expenses incurred on account of, or in connexion with, or incidental to, the election, and the amount received from each person, club, society or association separately.

2. Under the head of expenditure, there shall be shown :

(a) the personal expenditure of the candidate incurred or paid by him or his election agent, including travelling and all other personal expenses incurred in connexion with his candidature ;

(b) the name, and the rate and total amount of the pay, of each person employed as an agent (including the election agent), clerk or messenger ;

(c) the travelling expenses and any other expenses incurred by the

candidate or his election agent on account of agents (including the election agent), clerks or messengers ;

(d) the travelling expenses of persons, whether in receipt of salary or not, incurred in connexion with the candidature, and whether paid or incurred by the candidate, his election agent or the person so travelling ;

(e) the cost whether paid or incurred of—

- (i) printing,
- (ii) advertising,
- (iii) stationery,
- (iv) postage,
- (v) telegrams, and
- (vi) rooms hired either for public meetings or as committee rooms ;

(f) any other miscellaneous expenses whether paid or incurred.

*Note.*—(1) All expenses incurred in connexion with the candidature whether paid by the candidate, his election agent, or any other person, or remaining unpaid on the date of the return are to be set out.

(2) For all items of Rs. 5 and over, unless from the nature of the case (e. g. travel by rail or postage) a receipt is not obtainable, vouchers are to be attached.

(3) All sums paid but for which no receipt is attached are to be set out in detail with dates of payment.

(4) All sums unpaid are to be set out in a separate list.

#### SCHEDULE IV

(See Rules V, VII, XXII, XXXIII, XLIV, and XLVII).

The following shall be deemed to be corrupt practices for the purposes of these rules :

##### PART I

##### *Incurring Expense without Authority*

6. The incurring or authorization of expenses by any person other than a candidate or his election agent on account of holding any public meeting or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, unless he is authorized in writing so to do by the candidate.

##### PART II

5. The incurring or authorizing by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent, in contravention of the provisions of any notification of the Governor-General in Council issued under rule XX of these rules.

What exactly must be included under the head Election Expenses ? From what date prior to an election should expenditure incurred by

a candidate be included in the return prescribed by rule XIX and in the 'regular books of account' to be maintained under rule XXI? These questions are somewhat difficult to answer, since there is no authoritative decision as to what exactly is meant by the words 'in connexion with or incidental to the election'.

Until a maximum scale of election expenses is fixed by the Governor-General in Council under rule XX a candidate will be well advised to include *everything* he can. He is not, like the election agent in the United Kingdom, continually confronted with the dread of exceeding the prescribed limit. It may, however, be assumed that as soon as full and reliable statistics are available this restriction on election expenditure will be imposed, and it is therefore desirable to state the English practice.

First then as to the date from which the liability to record all expenditure begins. In the *Borough of Norwich* (1886: 4, O'M. & H., 85) it was proved that before the candidate consented to stand, two meetings were held costing £319, and it was contended that the expenditure so incurred should have been paid by the election agent and shown in the latter's accounts. Mr. Justice Cave drew a distinction between 'the expenses of getting a candidate and the expense of promoting his election after you have got him'. Mr. Justice Denman added:

'I think that the court must in every case consider (not by reference only to the definition of "candidate") whether the payment in question is a payment which is made "in respect of such election". Upon these words our decision must turn. Now, according to my view, these expenses for the meeting were really not in substance expenses incurred in the conduct or management of that election; they were expenses incurred in order to induce a particular person to become a candidate, and the two things are, in my judgment, totally distinct. I think therefore that until the respondent had consented to become a candidate, the payment was not a payment on his behalf.'

In the same year at *Kennington* (1886: 4, O'M. & H., 94) it was held that expenditure on checking the list of registered electors was not an expense on account of the election. It would follow therefrom that any expense 'incurred on account of an expected election', and yet forming no part of the necessary preparations for the 'conduct or management' of the election, may be excluded from the return of election expenses. On the other hand, all work done before the election, which work, or the outcome of it, the election agent takes under his own control for the purposes of the election, must, of course, be paid for by him and included in his return. Obviously the cost of meetings held to support a particular candidate should be included if an election is imminent, but meetings held to educate the electorate with a view to awaking public opinion in favour of a policy which the eventual candidate subsequently adopts stand on a different footing.

Thus in *Haggerston* (1896 : 5, O.M. & H., 70) Mr. Justice Wright held that

‘ the giving of lectures for what has here been called the education of the constituency is not at all necessarily an expense on account of the election or an election expense. We think it would be unduly confining the methods of political work and political enlightenment in this country, if we were to attempt to lay down any such general rule as that lectures, even though given with the view of advancing the prospects of a particular candidate, are necessarily election expenses. We think that must depend upon the circumstances in each case, and that in the case of this election it is not made out that the expenses of these lectures were expenses on account of the election.’

The need for the education and political instruction of the Indian elector is as insistent as it is difficult. The process must be slow—and costly—if it is to be successful. The following words of Mr. Justice Bruce apply with even greater force to India :

‘ It is as I conceive a matter of great public importance in this country that those who exercise the franchise should have frequent opportunities of hearing lectures, speeches, and discussions on political questions. Large masses of the people are not likely to exercise their voting power intelligently unless they have the political questions of the day brought to their notice frequently and in an attractive form. The political meeting is an important element in the education of the people, and I feel satisfied that it was not intended by the Legislature to impose any restraint upon the full discussion of public affairs in public meetings. Of course public meetings cannot be held without expense, but, in my opinion, the expenses of such meetings are not election expenses, unless the meetings are in some way connected with the election of the candidate.’

What may be regarded as expense antecedent to the commencement of the election campaign may properly be excluded. Thus in the *Borough of Great Yarmouth* (1906 : 5, O.M. & H., 190) :

‘ Everything which a candidate expends because he is a candidate is not, according to the decisions, necessarily expended in the conduct and management of an election. A candidate generally pays registration expenses ; and he clearly pays in the hope that what is done will promote his election, and yet it has been decided that those are not expenses in the conduct and management of an election. So in the same way it seems to me that any expenses which you can identify as being expenses for the promotion of the political views of the candidate’s party do not come within the category of “ expenses in respect of the conduct and management of the election ”.’

The matter to be considered is not a period of time at all, but the purpose for which the expense was incurred. This principle was again enunciated in *East Dorset* (1910 : 6, O.M. & H., 40), Mr. Justice Lawrence, considering that only expenses which belonged to a candidate ‘ personally in the cause of his election ’ need be included. No exact definition of the expenses of a candidate can be given, and the facts in each particular case must be examined.

'I think that when a man puts himself in that position "I am not merely nursing the constituency; I am not merely considering something in the distant future, but I am going to put myself by my candidature in such a position that I shall be ready at any moment for the election"—then I think what he does then may be considered as part of the conduct and management of the election, and I consider that the expenses may be, and some of them are expenses of the election.'

The position of the candidate is therefore one of some difficulty when his expenditure is limited. He is warned that a given sum is all that he will be allowed to spend on election expenses, and that if he exceeds it his election will be void. But he is not told when the election legally begins. Mr. Powell in his *Practical Notes on the Management of Elections* suggests three good working rules:

(1) As a general practice, no expenditure which dates back further than six months from the polling day need be included in the return of expenses.

(2) But where money is spent with a direct view to the polling booth, the six months' rule must be disregarded and the expense, whenever incurred, should be included. Thus, registration expenses are excluded as well as the expenses of *bona fide* political associations supporting principles rather than a person.

(3) In forming your final judgment, remember that it may have to bear the scrutiny of an election court; and ask yourself whether you can, if necessary in the witness-box, give reasons which will commend your decision to the judicial mind in the cold shrewd atmosphere of that tribunal.'

But in India, as already noted, the absence at present of a fixed maximum eases the path for the candidate while at the same time removing the principal test of strict compliance with the rules and absolute avoidance of all illegal practices. The definition of the word 'candidate' in rule XXX may also assist any election court of inquiry in deciding when precisely a candidate begins to incur liabilities as a candidate. Note the words 'when an election is in contemplation' and 'prospective candidate'. Following the judgment in *The Counties of Elgin and Nairn* case (1895: 5, O'M. & H., 10), these words 'at least suggest and contemplate an election, which is not *in nubibus*, but is reasonably imminent'.

But even if we can avoid the difficulty deliberately created by the absence of any definition as to what is meant by the 'conduct and management of an election', of deciding the date from which the election expenditure of a candidate begins to run, there is still the problem of what exactly should be included. Few candidates in the United Kingdom can hope that their balance at the bank will only be reduced by the amount of permissible expenditure which roughly averages £700. It was estimated at the general election of 1922 that the cost of contesting a seat rarely fell below £1,000 and often rose to £2,000. How can we account for the unaccounted expenditure? The answer may be found in a letter written by a member for an English



constituency some years ago. who. it may be added, did not propose to seek re-election. 'What this constituency needs', he wrote, in reply to one of many demands. 'is not a member of Parliament but an additional relieving officer.'

Judicial decisions have emphasized the fact that candidature for Parliament is not 'intended to dry up the fountains of charity' or put an end to harmless hospitalities. See also the remarks of Mr. Baron Pollock in *Worcester City* (1892 : 4, O'M. & H., 154). Nor need it put an end to 'established custom' (*Lancaster*, 1896 : 5, O'M. & H., 44). A candidate in the United Kingdom is in fact expected to pay, and unless he is a Labour candidate, to pay heavily for the privilege. He must subscribe to all local institutions, present prizes for athletic sports, and in his desire to show his public spirit he and his wife give financial encouragement to all such movements as Infant Welfare, Boy Scouts and Girl Guides, Y.M.C.A., and various clubs, whether intended to provide work for the unemployed, to assist ex-soldiers, or to give the poor blankets and coal in the winter. But all this with discretion and doubtless under the advice of a careful election agent. For there are several reported cases which set a limit to indiscriminate charity.

Perhaps the most difficult of all problems connected with corrupt practices is to state when charity ends and bribery begins. In *Plymouth* (1880 : 3, O'M. & H., 109) the election was impugned because the candidate had made a practice of distributing blankets, clothing, and even sums of money among the deserving poor without reference to their creed or politics.

Such distributions had taken place in 1874 and 1876. The election was held four years later. The court refused to avoid the election.

Lush. J., said :

'It is obvious that what are called charitable gifts may be nothing more than a specious and subtle form of bribery, a pretext adopted to veil the corrupt purpose of gaining or securing the votes of the recipients. And if this is found to be the object of the donor, it matters not under what pretext, in what form, to what person, or through whose hands the gift may be bestowed, or whether it has proved successful in gaining the desired object or not. On the other hand, a gift may really be what it professes to be, the offspring of a purely benevolent impulse, and if this be its character, it matters not whether the recipient makes a good or bad use of it, or what its effects may be upon him.. A motive originally pure cannot become corrupt by reason of a misuse of what was intended to be a benefit. All we can say is that a charitable gift, however injudicious it may be, is harmless in the eye of the law, whatever its effects may be upon the recipient, and certainly it is not bribery.'

This followed Baron Bramwell's dictum in *Stroud* (1874 : 2, O'M. & H., 132) :

'The legislature . . . intended to prohibit acts done with the specific object of influencing the mind of the individual voter to whom they had

relation by the particular temptation held out to him, but it did not intend to prevent an act being done to a person, kind and good in itself, merely because it had a tendency to make that person favourable to the persons doing it.'

A later case refers to this judgment as 'lenient'. In *St. George's* (1896 : 5, O'M. & H., 95) per Pollock, B. :

'Now great as is the respect in which both my brother and myself hold anything that was said by Mr. Baron Bramwell, we feel we should not be quite prepared to adopt so lenient a judgment, but should prefer to say, as I did in the *Salisbury* case (4, O'M. & H., 28), that in each case the question arises whether the distribution of charity was done honestly, or whether it was done corruptly and that we must take the whole of the evidence into consideration, and inquire whether the governing principle in the mind of the man who made such gifts was that he was doing something with a view to corrupt the voters ; or whether he was doing something which was a mere act of kindness or charity.'

The leading case is perhaps *East Nottingham* (1911 : 6, O'M. & H., 300), where the election agent had relieved a large number of necessitous cases in the constituency, and the candidate freely admitted that such action would bring him popularity. Channell, J., said :

'What one has got to look at is what we think is the governing principle in the mind of the man ; that is to say that if we think this was real charity, and that incidentally, as it were, he also saw and was willing and had the intention of taking advantage of the fact that there was popularity to be gained by it, and therefore that there were votes to be gained by it, that if the real governing thing in his mind was the charity, that that would not be illegitimate. On the other hand if the real thing was to get popularity to debauch the constituency . . . and to do it under the name and the pretence of charity, why then, of course, that would be bribery of a very serious kind.'

The court refused to declare the election void, being, it would seem, impressed by the fact that when the election became imminent the candidate who was a sitting member announced that applications must stand over for the present. In the same year the election at *Kingston-upon-Hull* (6, O'M. & H., 374) was avoided because of the distribution of sweets to children and coals to paupers just before the election. Per Ridley, J. :

'Now assume for the moment that a man forms a design which at the time is unobjectionable because no election is in prospect, for that is the point ; yet if circumstances alter and an election becomes imminent he will go on with that design at his risk, and if he does so he will be liable to be found guilty of corrupt practices ; that is to say that he has done a thing which must produce an effect on the election contrary to the intention of the Act of Parliament.'

The general conclusion is thus submitted by Mr. C. W. Williams, author of the nineteenth edition of *Rogers on Elections*, from which work these cases have been cited :

'In cases in which charity or some similar motive such as hospitality is in question (a) that the question is what was the governing motive,

charity or popularity ; (b) that the two motives may exist together without dangerous results unless the latter predominates ; (c) that charity is not forbidden unless it is immoderate ; (d) that when an election becomes imminent it should cease, and should not be regarded as merely postponed ; (e) that the sitting member is in a better position than a candidate ; and (f) that the onus of proving a corrupt motive rests on those who affirm it.'

The question will again come under consideration in connexion with the offence of treating. For the present the best advice that can be given to a candidate in India is that he should confine his liberality to charity of a public nature or to a cause, e g. poor relief, where electors are unlikely to be recipients. A sudden outburst of philanthropy when an election is imminent has been said to be not charity, ' but party feeling following in the steps of charity and mimicking her gait '. Indiscriminate and careless generosity should be avoided and a careful account should be kept and publicly announced of any sums expended in charity.

Public benefactions such as the gift of a playground to a school, the foundation of a library, or the improvement of a hospital are to be commended. The art of ' nursing ' a constituency has been referred to in Chapter II.<sup>1</sup> The main principles that the candidate or his election agent must bear in mind may now be summarized. To be in a safe position he must show that any payments made are :—

- (a) bona fide in the cause of charity and not indiscriminate and careless ;
- (b) not intended to be even an indirect inducement to obtain a vote ;
- (c) free from any attempt at concealment ;
- (d) not in any way contingent on the result of the election.

So too with any promise he may make, as for example, undertaking to help a voter to obtain a post. He will also take care that any appointments he may make in the management of his estate or his household ' during an election ' are unexceptionable. In *Hastings* (1869 : 1, O'M. & H., 218) it was held that lavish household expenditure might be bribery. Lastly, he will do well to remember that payment after an election may be bribery if made in pursuance of a previous corrupt engagement or undertaking. Though the time when a promise or gift is made is immaterial as to the act, it may, of course, be material as to the proof of corrupt intention. If the candidate is fortunate enough to possess an astute election agent, he will make no contribution even to the good cause of charity without first consulting him.

It is not only the restriction of expenditure or the avoidance of illegal expenditure that makes the question of election expenses so important. The declaration regarding them (vide Schedule III) has to be lodged within 35 days from the date of the publication of the result of the election in the Gazette (rule XIX (1)). This return is open to inspection by the public, and ' the other side ' will doubtless

take copies. Rule XXXVI provides that a petition against any returned candidate will be time barred unless presented to the Governor within fourteen days from the date on which the return and declarations are received by the returning officer.

The wise candidate will appreciate therefore the advantage of an early and accurate return in proper form of his expenditure. The sooner he gets it in, the greater the difficulty for his opponent, who will have not only to file his own return of expenses but also to prepare his statement of charges 'setting forth full particulars of any corrupt practice', if he wishes to file an election petition. It is in fact a mistake to wait the five weeks—giving time to the other side to collect evidence or make inquiries in interested quarters with a view to proving that the statement ultimately submitted is incomplete or incorrect. All sorts of extravagant stories regarding bribery and corruption are spread during and after an election. A prompt return of election expenditure is the best, and generally the final, means of repudiation. Hence the essential need for a careful record of all expenditure, carried forward and totalled from day to day.

The election agent should therefore in placing any orders for stationery, printing or posting, for the hire of any committee rooms, &c., insist that the bill be submitted *at once*. It will be noticed that Schedule III allows a separate list for unpaid sums. In this can be included any disputed items. The travelling expenses of the election agent, sub-agents, and the personal expenses of the candidate should be written up daily. In the *Attock* case (1921 : I. E. P., 10) it was held that the petitioner and his election agent did not keep such accounts of the election expenses as to satisfy the requirements of Schedule III, and therefore incurred the disqualification imposed by rule V, though this was subsequently removed by the local Government in accordance with the powers conferred by the proviso to that rule. After the first general election in India a large number of candidates failed to lodge the necessary declaration, but were subsequently exonerated. It is improbable that a similar concession will be made in future elections, and all concerned, candidates, election agents, and sub-agents, should therefore realize the paramount importance of an early and accurate return.

The affidavit to accompany the statement should bear a stamp of one rupee, the cost of which should be included in the list of expenses. The form is given in Schedule III as follows :

The form of the affidavits referred to in rule XIX shall be as follows,

*Affidavit.*

I                      being the appointed election agent for                      a candidate for election in the                      constituency do hereby solemnly affirm that the above return of election expenses is true to the best of my knowledge and belief, and that, except the expenses herein set

forth, no expenses of any nature whatsoever have to my knowledge or belief been incurred in, or for the purposes of candidature.

(Sd.)

*Election agent.*

*Solemnly affirmed before me.*

*(Magistrate).*

*Affidavit.*

I, \_\_\_\_\_, being a candidate for election in the \_\_\_\_\_ constituency do hereby solemnly affirm that the above return of election expenses is true to the best of my knowledge and belief, and that, except the expenses herein set forth, no expenses of any nature whatsoever have to my knowledge or belief been incurred in, or for the purposes of, my candidature.

(Sd.)

*Candidate.*

*Solemnly affirmed before me.*

*(Magistrate).*

*Special form of declaration by a Candidate under rule XIX, sub-rule (4).*

I, \_\_\_\_\_, being a candidate for election in the \_\_\_\_\_ constituency do hereby solemnly affirm that the return of election expenses signed by my election agent is (with the exceptions noted below) true to the best of my knowledge and belief, and that (with the exceptions noted below) no expenses of any nature whatsoever other than the expenses therein set forth have to my knowledge or belief been incurred in or for the purposes of my candidature.

*Particulars of Exceptions.*

.....

*(Candidate).*

*Solemnly affirmed before me.*

*(Magistrate.)*

It is wise for the candidate to advertise directly after the poll that all claims must be submitted within a certain time, say 10 or 14 days. Under the English law (C. I. P. P. A., Section 29 (2) & (3) all claims against a candidate which are not sent in to the election agent within 14 days after the declaration of the result of the poll are barred and shall not be paid. In India so drastic a precaution does not appear to be necessary, and the list of unpaid claims should ordinarily be small. The accounts maintained by the election agent or the candidate if he is his own election agent must be 'regular books'. Failure to keep election accounts is punishable under Section 171 I with fine which may extend to Rs. 500. It is suggested that registers be opened to be written up daily. In them should be entered all receipts and all expenditure.

In connexion with the declaration of receipts it should be remembered that :

' the difference between an act done for the conduct and management of the election and a thing done merely for the promotion of the success

of a particular candidate seems to me to be this : If another person pays an expense, and that expense is one of the ordinary expenses of the candidate, so that the doing of that by the third person relieves the candidate from part of his election expenses, then the candidate must treat that assistance as given to him in respect of his election expenses, and must treat the expenses as part of his expenses.' (Per Channell, J., in *Cockermouth* (1901, 5, O'M. & H., 158).

As regards such extraneous assistance the test would seem to be whether the person rendering it can in fact be regarded as an agent for the conduct and management of the election. If so any expenditure incurred by him on behalf of the candidate should be shown both on the receipt and expenditure side of the account. In India any such help must be governed by the conditions laid down in Section 171 H of Chapter IX A of the Indian Penal Code. It is well therefore to bear in mind that trouble may arise from the officiousness of well-intentioned supporters who incur expenditure without authority, or whose actions would support the contention that they were agents of the candidate.

The first precaution (as advised in an earlier chapter) a candidate should take is to warn all his supporters that only he, or his election agent, can sanction any expenditure designed to promote his election. The proviso to Section 171 H would meet the case of persons paying the hire of a vehicle or telegrams and the like 'in anticipation of sanction'. It is based on Section 28 (1) & (2) of 46 & 47 Vict. c. 57 (the C. I. P. P. A.) and Section 34 of the Representation of the People Act, 1918. The general intention of the legislature in this matter is to prevent not only individuals but also clubs and associations from having an unacknowledged influence on the conduct of elections. The candidate's expenditure should be allocated under the headings given in Schedule III.

**(a) the personal expenditure of the candidate incurred or paid by him or his election agent, including travelling and all other personal expenses incurred in connexion with his candidature ;**

Under Section 64 of the C. I. P. P. A. the expression 'personal expenses' means

'the expenditure of any candidate in relation to any election and includes the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election.'

What is 'reasonable' expenditure is a question of degree to be determined by the circumstances of each case, due regard being paid to the social status, not only of the candidate but also of the persons he may find it necessary to entertain. Mr. Powell gives an illustration.

'This expenditure on entertainment must be strictly *bona fide*. The circumstances must be such that the hospitality is socially reasonable and is extended to persons who might have been entertained in the same way even if no election had been pending.'

Under this head the candidate should include any payment made for the hire of a motor car or other conveyance, or for petrol used during his tours in the constituency, the vendor's receipted bill being filed as a voucher. In *East Dorset* (6, O'M. & H., 38), it was held that when the candidate's mother hired two motor cars in order to place her own cars at the disposal of her son and to convey speakers about the constituency, such expenditure should be included in the return. But such charges as the candidate would ordinarily have to meet in his position need not be entered—e. g. pay of motor-car driver, if one is usually maintained, or the cost of taking his servants with him. It would be safe to include any hotel bill or charges incurred for staying in a place for the purpose of the election. The deposit on candidature need not be entered.

**(b) The name, rate and total amount of the pay of each person employed as an agent (including the election agent), clerk or messenger.**

In India the question of inclusion may be one of some difficulty. It will certainly be of importance should the Governor-General in Council consider it desirable to prescribe under rule XX (1) (b) a maximum. Take for example the case of a candidate who has always enjoyed the services of a private secretary and probably has also employed chaprasies or peons. These persons would naturally be willing to work for him during his election. Should their salaries and expenses be included under this head? In England if a person ordinarily employed by the candidate undertakes additional duties in connexion with the election without additional remuneration, the candidate need not include in his return any proportionate part of his salary, provided of course that the ordinary employment is not 'colourable'.

There is also the case of a proprietor or director of a large business employing several clerks. Can he accept the voluntary services of such employees? The leading case in English Law is the *Hartlepool* case (1910: 6, O'M. & H., 5) when the candidate, Sir Christopher Furness, employed his private secretary as election agent and allowed the clerks in the firm of Furness, Withy & Co., Ltd., to canvass and assist in bringing persons to the poll.

Mr. Justice Phillimore said:

'I am certainly inclined to think that if a business man takes his business clerks and employs them for election work which, if he had not business clerks, would be normally done by paid clerks, he ought to return their salaries as part of his expenses; otherwise, a rich man, and above all a large employer, has a very considerable advantage over other candidates. The maximum limit of expenditure being equal for both, he can attribute to other matters than clerks a very much larger sum than his rival would be able to attribute.'

To give refreshment to any person engaged in assisting the candidate constitutes payment, and therefore any such expenditure should be

included.<sup>1</sup> It would probably fall under the next heading of expenditure.

(c) the travelling expenses and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent), clerk or messengers ;

This in India, where personal solicitation is the most common form of political propaganda, is likely to be the heaviest item in the bill. The disbursements shown under this head are on account of *agents*. Therefore every person named can, as seen above in the examination of the general question of agency, commit the candidate. Doubtless the scrutiny by an opponent will be directed to discover whether the list includes the name of any 'well-wisher' so ill-advised as to indulge in intimidation or to make promises of remuneration in return for a vote. We have here an illustration of the need for limiting the number of agents as far as possible.

(d) the travelling expenses of persons, whether in receipt of salary or not, incurred in connexion with the candidature, and whether paid or incurred by the candidate, his election agent or the person so travelling ;

This includes voluntary workers or the expenses of gentlemen who may have come from outside the constituency to address a public meeting held in support of a candidate. Should a candidate hire a car to facilitate the tour of such a person through the constituency, the receipted payment should be shown in the return. The sub-agent at an outlying part of the constituency may wish to send in his copy of the electoral register brought up to date by special messenger. If the latter is not salaried and is only given his railway fare or other cost of conveyance, such payment would appropriately be shown here. If, however, a gentleman, travelling on his own business, volunteers to see the documents safely to their destination, no payment need be shown. But if he takes the trip specially to assist the sub-agent and pays for his own ticket, such payment should be included, and the candidate should refund the cost of the ticket.

Such an item might fall under the head (3) of the note to schedule III. No receipt would be available. Hence though shown under head (d) there would be a marginal note, vide No. . . . in list (3).

(e) the cost whether paid or incurred of—

- (i) printing,
- (ii) advertising,
- (iii) stationery,
- (iv) postage,
- (v) telegrams, and
- (vi) rooms hired either for public meetings or as committee rooms ;

The desirability of prompt payment has been emphasized above.

<sup>1</sup> *Barrow-in-Furness* (1886: 4, O'M. & H., 80).



A long list under par. (4) of the note to Schedule III of unpaid or 'disputed' charges may provoke suspicion, and the more vouchers that can be filed the better.

The incidence of these charges must necessarily vary according to the constituency. In an up-to-date urban constituency it may be useful to display posters and to distribute literature on an extensive scale. In rural parts such expenditure would probably be limited to copies of the electoral register, of the candidate's address, picture cards, polling cards and such other printing and stationery as is suggested in the chapter dealing with 'Organization'. A subsidiary register might well be opened for expenditure under the head (e) (i) to (vi) to be written up daily, as accounts are received from the sub-agents. The importance lies at present in the inclusion of *all* items of legal expenditure, so that the opposition cannot impugn the return as inaccurate. Should a maximum limit be prescribed for election expenses, such register should enable the candidate and his agent to watch the progress of expenditure and prevent any excess over the permissible outlay.

(f) any other miscellaneous expenses whether paid or incurred.

*Note.*—(1) All expenses incurred in connexion with the candidature whether paid by the candidate, his election agent, or any other person, or remaining unpaid on the date of the return are to be set out.

(2) For all items of Rs. 5 and over, unless from the nature of the case (e. g. travel by rail or postage) a receipt is not obtainable, vouchers are to be attached.

(3) All sums paid but for which no receipt is attached are to be set out in detail with dates of payment.

(4) All sums unpaid are to be set out in a separate list.

Under this head might be included cost of erecting or decorating a shamiana, cartage of chairs for a meeting, &c. Two points should be carefully borne in mind.

First, the only expenses to be shown are expenses *incurred in connexion with the candidature*.

Secondly, should any payment be challenged, the election court will examine the *motive*.

Thus the cost of a lecture by an association or a private individual on general political matters, even though the candidate might subsequently identify himself with the opinions expressed, and though it might improve the prospects of his candidature, would not, unless it is given in furtherance of the election of that candidate, be included.

As an example let us take a lecture on the evils arising from cow-killing or in support of an agitation to prevent the export of food grains. The candidate might very possibly be benefited by such propaganda, but unless the speaker asks his audience to vote for the particular candidate, it cannot be regarded as part of the conduct or management of such election. Indeed, the candidate could subscribe to

such an agitation and the expenses of the deputation without returning the same in his accounts (*Haggerston* : 5, O'M. & H., 70). But if the candidate or his election agent invites the lecturer or arranges for the meeting, the cost of the same should certainly be included.

The proof of a corrupt intention is generally essential to convince an election court that a 'corrupt practice' has been committed. This was more than once affirmed in the petitions arising from India's first general election. The decisions given in the *Punjab S.E. Towns* and *Rohtak* follow the principle enunciated in the English cases. Therefore a bona fide payment, even though illegal, might be condoned by the court under the powers conferred by rule XLIV (2). In England a candidate who discovers an inadvertent infraction of the law can apply for relief to the High Court, notice being given to the other candidates. The Indian law contains no such provision, and it must therefore be left to an election court to exonerate the candidate or his agent from a mistake made in good faith.

It is of course conceivable that payments may be made, which an opponent may hear of and which he may wish to impugn on the grounds that they should have been included and were illegal payments and therefore excluded by the Respondent. For example, the candidate travels by a motor car which breaks down. A man runs to get assistance and is rewarded by the payment of a rupee. He brings back two mistris who repair the damage and are paid five rupees. No mention of this is made in the return. The three men happen to be voters and are alleged to have voted for the candidate who gave them the rewards.

The proof of the sincerity of the candidate, of his need for assistance, and the fact that, though he was perhaps going to a meeting, he believed that this expenditure was really on the ordinary maintenance of his own motor car, would probably ensure costs being paid by his opponent when the petition was dismissed.

Let us take this supposed case a step further. In the course of his tours through the constituency the candidate has to cross several streams over which the car has to be pushed or carried. The ordinary rate of payment might be four or six annas per person employed. He gives at each place large sums working out to a rupee a head, and at the same time seizes the opportunity to allude to his candidature. He omits to record these items in his return of election expenses. He might find it difficult to convince the election court that his generosity had no connexion with the conduct and management of his election or that his motive was not corrupt. Each case must be judged on its own merits, but, it is submitted as practical advice, it is far better to err on the side of inclusion, especially in the absence of any limit of expenditure, and to avoid ostentatious generosity or donations to possible electors. When, however, this limit is imposed, as noticed above, the candidate's security will lie in keeping *all* his expenditure under very careful control.

But even without any corrupt intention, an election court might

avoid an election if the return of expenses had been carelessly prepared. In a recent case in England (the *Berwick* election petition, May 1923) Mr. Justice Avory disagreed with the contention of the defence that the agent must be found 'knowingly' to have contravened the law, for if that were correct it followed that a candidate or agent who kept no accounts and recklessly incurred credit could never be brought within the section of the Corrupt Practices Act.

The collection of vouchers is always difficult. It is suggested that it would be wise for the election agent to keep a separate election account at a bank and, so far as may be possible, pay all claims by cheque. He should certainly have a book with counterfoils on which he should note monies advanced or payments made.

It may be of interest to the Indian reader to see the actual returns filed in an English county constituency with an electorate of 37,610 by the Conservative and Liberal candidates.

In England the candidate can spend £100 on 'personal expenses' without giving an account and also pay his election agent £75.

*Election of Member to serve in Parliament for the  
..... Division of the Parliamentary County of .....  
Held on the 15th day of November 1922.*

The following is a Summary of the Return respecting Election Expenses of Mr. A, a candidate at the above Election, which return was received by me on the 21st day of December 1922 :

	£	s.	d.
Personal expenses of Candidate, including payment to Agent . . . . .	147	10	10
Payments to Sub-Agents, Clerks and Messengers . . . . .	383	19	10
Printing and Stationery . . . . .	323	14	10
Advertising and Billposting . . . . .	63	11	2
Postages and Telegrams . . . . .	69	10	2
Hire of Rooms . . . . .	200	16	0
Miscellaneous . . . . .	28	2	3
	£1,217	5	1

(Signed).....

*Election Agent.*

Mr. B.

	£	s.	d.
Personal Expenses of Candidate . . . . .	170	0	0
Payments to Agent, Sub-Agents, Clerks and Messengers . . . . .	111	3	1
Printing and Stationery . . . . .	181	19	6
Advertising . . . . .	109	11	3
Postages and Telegrams . . . . .	71	8	2
Hire of rooms . . . . .	66	6	0
Miscellaneous . . . . .	34	18	6
	£745	6	6

(Signed)

*Election Agent.*

Dated this 23rd day of December 1922.

The following is suggested as a suitable form for a register :

Date.	Name of Payee.	No. of Voucher.
	(a) Personal expenditure.	
	(b) Salaries.	
	(c) T. A., &c., of agents.	
	(d) T. A. of other persons.	
	(e) (i) Printing.	
	(ii) Advertisement.	
	(iii) Stationery.	
	(iv) Postage.	
	(v) Telegrams.	
	(vi) Hire of rooms.	
	(f) Miscellaneous.	
	Remarks.	

(3) Miscellaneous, i. e. under (f).

- (4) Register of advances, the recoupment of which by sub-agents would be posted on receipt of vouchers in the daily book.
- (5) Letters issued and received.
- (6) Orders issued.

Sub-agents should be instructed—preferably by instructions in writing that :

- (a) they may incur no expenditure beyond a fixed sum without the order of the election agent in writing ;
- (b) that they must send in daily returns of expenses paid with vouchers ;
- (c) that they will be held responsible for any delay in payment of any claim ; and
- (d) that in any case of doubt as to whether certain expenditure is allowable they should refer the question *at once* to the election agent.

Forms in which election expenses should be returned can be obtained from the returning officer.

## CHAPTER VII

### ORGANIZATION

THE Indian candidate has certain advantages and disadvantages as compared with the candidate in England. Some of these will in course of time probably disappear as the art of electioneering becomes more widely known, and as party divisions with head-quarters to direct and assist the electoral campaign are developed. At present there is but little 'staff work' done during an election. Yet it is certain that, though it may be impossible to win an election against the will of the electors, yet, when the voting strength of a constituency is at all evenly divided, is uncertain or uninstructed (as in India), that candidate who has the best organization is most likely to win. The function, in fact, of the skilful agent is to see that no advantage is lost to his candidate through neglect or bad management. As many seats are won or lost by small majorities, every effort should be made to secure the attendance at the polling station of voters, who again have first to be persuaded by strictly legal methods to give their vote for one candidate rather than another. In India, where at any rate during the earlier elections the obtaining of votes must depend as much on the personality of a candidate as on his political principles, good organization must tell. It is little matters of detail which count.

'Above all it should never be forgotten by those concerned in electoral work that energy and close attention to the business of an election rank equally with enthusiasm as winning qualities in all elections.' (Woodings's *Election Manual*, p. 6).

The Indian candidate escapes the trouble caused by outside organizations with their propagandists, their meetings and literature. On the other hand, he receives no assistance in the shape of ready-made election tracts or outside orators, and must depend on his own efforts for the political education of his constituency. The following description of the organization adopted during election contests in England, taken from handbooks issued by the Labour or Liberal Associations, is therefore offered for perusal, not so much with the idea that it might necessarily with advantage be adopted wholesale in India, but rather in the hope that from it candidates may be able to use some of the suggestions and adapt them to Indian conditions, or perhaps invent for themselves methods applicable to India, designed first to educate the elector, secondly to obtain his vote, and thirdly to ensure that any vote so obtained is properly and punctually recorded.

An election in India will usually occur from one of the following causes :

- (a) Resignation of a candidate, which may be suddenly announced or may for some time have been anticipated.
- (b) Death of a member.
- (c) Failure of a returned candidate to take his seat, and consequent notification by the Governor under rule XXIII declaring the seat vacant.
- (d) Ineligibility of a member after election, by his becoming subject to any of the disabilities mentioned in clauses (a), (d), (e), (g), and (h) of sub-rule (1) or in sub-rules (2), (3), and (4) of rule V.
- (e) Declaration by Governor-General or Governor that a seat has become vacant owing to the absence of a member for a period of two consecutive months, or to his inability to attend to the duties of his office (Section 93 of the Government of India Act).
- (f) Dissolution under Section 63 D or 72 B of Government of India Act of a Council or Legislative Assembly.

(a) to (e) above will cause by-elections : (f) results in a general election. The former is usually the more difficult to contest since there is nothing going on elsewhere to distract the attention of politicians other than those in the constituency itself.

‘The highest organizing talent and the fullest resources of the great political parties are called into the arena, and all concerned are compelled by the heat of party strife to work with a zeal and energy which ensure that nothing is left undone which by any chance can secure advantage to either side.’

It may be added that the sudden cause of a by-election is also an impediment as it may often find the candidate unprepared. Attempts are made therefore to maintain in each constituency a permanent organization which can at once be placed at the disposal of the election agent directly an election comes within sight.

The first thing a candidate has to do is to get himself adopted. He is required in England to show something more than mere enthusiasm or rhetorical ability. His local knowledge and influence are important factors. Still more perhaps the extent of his financial resources. In India there are at present no head-quarter party organizations, each with a party chest from which candidates can derive financial assistance. ‘To get money from the party funds,’ it was said during the general election of 1922 in England, ‘you must have a face like brass, a hard-luck past, a needy present, and a brilliant future.’ The amount which a candidate can afford to pay, including possibly the forfeit of his deposit, in event of his failing to obtain one-eighth of the recorded votes, is therefore a very important and practical consideration, and must depend not merely on the candidate’s purse but on the conditions

prevailing in his constituency, the amount of travelling he and his agents will have to undertake, and whether the instruction of the electorate has to be for the most part personal by word of mouth, instead of the cheaper, though less effective, agency of the post. An indication has been given in the chapter on election expenses of the sums returned in candidates' declarations in England. In India it is likely for some time to come in most constituencies to fall well below the figures given there and for an ordinary rural constituency, assuming that the candidate usually maintains a motor car, the unavoidable expenditure might work out, if really efficient organization is adopted with salaried workers as follows :

	<i>Rural Constituency.</i>	<i>Urban or special Constituency.</i>
	Rs.	Rs.
Election Agent's fee . . . . .	300	300
Sub-Agents, six at Rs.100, allowing one to three polling stations . . . . .	600	200
Polling Agent's expenses . . . . .	200	—
Clerks . . . . .	200	100
Peons or messengers . . . . .	150	50
Printing . . . . .	250	350
Advertising . . . . .	100	250
Stationery, &c. . . . .	100	250
Postage and telegrams . . . . .	100	100
Hire of rooms . . . . .	100	100
Travelling expenses of candidate . . . . .	500	—
election agent . . . . .	500	—
sub-agents, &c. . . . .	500	—
canvassers, &c. . . . .	500	—
Miscellaneous . . . . .	400	300
	Rs. 4,500	Rs. 2,000

or about a third of the cost in England. Allowing for the possible loss of his deposit, it may, very roughly, be estimated that a candidate who cannot obtain voluntary assistance has to face the spending of Rs. 5,000, if he wishes to organize his election campaign thoroughly. In an urban constituency or a special constituency where oral instruction and personal canvassing over a large area is not necessary, the expense would be considerably less, as shown above. A candidate need not, of course, incur any of this expenditure beyond his own travelling expenses and the letters he writes, but the man who does spend money must inevitably have a great advantage on the man who does not. Most candidates should have no difficulty in finding friends or relatives who would undertake the duty of polling agent or even of sub-agent free of charge, or of persons who would distribute and explain election handbills, and who would—perhaps the most difficult task of all—become efficient canvassers. Assuming then that a candidate is prepared to try and organize his electoral campaign on generous lines, we may discuss how the money may most profitably be spent, the object being throughout to reach each individual elector.

In beginning the business of the election, the election agent should



establish himself in a conveniently situated central committee-room ; and it is of importance that this central committee-room in rural constituencies should be at the district head-quarters or where ready access can be had to the returning officer.

The election agent should take care not to burden himself with any detail work that he can avoid. There are certain matters, such as the appointment of the committee and sub-committees ; the hiring of committee-rooms ; the appointment of sub-agents, &c. ; the preparation and examination of nomination papers ; the issuing of orders for printing, &c. ; and watching the expenditure, for which he must in the main be responsible ; but while acquainting himself minutely with everything that is going on in the election, he should reserve his energies for general supervision in close association with the candidate.

He will also procure suitable rooms to be used as offices for his sub-agents, if possible on loan free of charge. The title ' Committee Room ' is taken from the C. I. P. P. A. of 1883. It means, in fact, any room used for the conduct and management of the election, either for meetings of the candidate's supporters, or as an office for any agent, or as a bureau of information to which electors can apply. These offices should bear placards demonstrating the purpose for which they are being used. Ingenious decoration is to be commended. These rooms must not be in any building where intoxicating liquor is sold to the public, and such a room should not be used for a committee meeting or for a meeting place with voters even for a short period (Schedule IV, Part II, 7).

The next step is to purchase copies of the electoral roll—or of the portions thereof required—for the head office and for sub-agents, allowing three for use in each office. In most constituencies printed copies are available, and if so the candidate should give each sub-agent three copies :

(1) For check, correction, and return to head-quarters, showing what electors have removed to a fresh residence, and the new address if ascertainable, a process known as ' tracing removals '.

(2) For maintenance in the sub-agent's office showing result of canvass, and requirements for conveyance to the poll.

(3) For use at the polling station for purposes of identification by the polling agent.

If the candidate can afford it, it is useful to have a sub-agent for each polling district. But one sub-agent should usually be able to control three or more polling stations with voluntary workers. He cannot conveniently combine the duties of polling (or as it used to be called, ' personation ' ) agent with those of sub-agent, as on the polling day he will be fully occupied in seeing that his assistants fetch up the voters to the poll.

The amount of printed matter necessary will depend to a considerable extent on the degree of literacy of the electorate. Cartoons are a

popular form of instruction<sup>1</sup>. The election agent should make arrangements early with a local press for the production of such election literature as he may, perhaps with the advice of an election committee, consider suitable. An estimate of cost should be obtained and payment made if possible on delivery. The following, apart from pamphlets dealing with particular subjects, are usually printed in England :

Canvass cards, corrected as far as possible after local inquiries based on the election roll. These are of two kinds, individual and household, the former based on the entries in the electoral register and sorted according to geographical requirements for delivery, the latter on the houses according to their situation. The use of an individual card for each elector is a rather troublesome business, but results in full information. These cards are made up into packets of 30 or 40, and are given out daily to canvassers to be returned that evening, and from these the household canvass card can be written up, and a vote 'For', 'Against', or 'Doubtful', made in the copy of the electoral roll. The individual canvass card is as follows :

<i>Constituency</i> .....	<i>Sub-Agency</i> .....
Name of elector.....	
Address of elector.....	
Number on election roll.....	
<i>Canvasser's Remarks.</i>	
If removed, give new address .....	
If untraceable or dead, enter accordingly .....	
If vehicle is necessary, state time to be fetched and whence procurable .....	
Will he assist in election ? If so, how ? .....	
Note whether <i>For</i> , <i>Against</i> , or <i>Doubtful</i> .	

The canvasser should note on the back of these cards any further facts, e. g. whether this individual can and will lend any vehicle (other, be it remembered, than a hired vehicle or one ordinarily used for hire) to bring electors to the poll, whether he or any person connected with him is likely to assist, who can influence him, and whether a second visit or even a visit from the candidate, in case of a person carrying local influence, would be desirable.

The election agent should endeavour to visit each sub-agency and give the canvassers personal instructions. Each canvasser should take with him copies of the candidate's address, one to be left with each voter. Handing in and explaining this address serves as a kind of introduction. In most cases these should be printed in the vernacular. The address can also be advertised in the local paper, copies given to postmasters, village schoolmasters and the like. It is the practice in England for a portrait of the candidate to be circulated amongst the electors, either on or with the election address.

<sup>1</sup> Vide frontispiece.

' If this is done, it is essential that the workmanship should be the best obtainable. The difference of cost between a bad portrait and a good one is so trifling that it is not worth while to send out a mere smudge or caricature. Satisfactory ' blocks ' of the candidate should be obtained as early as practicable, to expedite the production of the portrait card.' (Woodman, *op. cit.*)

If it is thought preferable to condense the work, the household canvass card alone may be used :

Constituency .....			Sub-Agency .....		
Registered No.	Name of elector.	For.	Against.	Doubtful.	Remarks.
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

This can be prepared according to streets, mahallas, wards or villages, and a separate report from the canvasser to the sub-agent and from him to the election agent would be necessary as to conveyances, and other matters. When an active opponent is discovered the fact should be reported with a view to his activities being watched and his arguments met.

The next matter to be printed, in those provinces where the system of marking the ballot paper with a **X** obtains, is the voter's instruction card, or 'polling card', a specimen of which has already been given in Chapter III at p. 22 *supra*. On the back of the polling card can be printed tersely-stated facts in favour of the candidate. These cards may be sent out by post, due time being allowed for delivery, though if voluntary assistance is available in the shape of cyclists, personal distribution is probably safer. It also admits of explanation to the illiterate, and the canvassers can have a last word with the elector on the eve of the poll. In those provinces (Bihar and Orissa and Central Provinces) where the coloured box system or the use of symbols to assist the elector in the identification of the candidate (Bombay) is in vogue the polling card would not contain the candidate's name but might well display his colour. The returning officer should be asked to decide and allot the coloured boxes or 'symbols' at least ten days before the poll opens. This should give time for printing the colour or for attaching a piece of coloured ribbon. The same colour might be displayed on an extensive scale at all the local committee-rooms. The ideal to be aimed at is that the polling card, accompanied by the candidate's final words to the electors, should reach each of the latter the day before polling takes place. In these final words, which may well be in the form of a letter, the candidate may find an opportunity to reply to any arguments advanced by his opponent. The candidate will of course bear in mind :

(1) That he must not publish 'any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, which statement is reasonably calculated to prejudice such candidate's election.' (Schedule IV, Part I, 4).

(2) That every circular, placard or poster having reference to the election must bear on its face the name and address of the printer and publisher (Schedule IV, Part II, 8).

Two specimens are attached, one from an Official Conservative candidate and the other from an independent 'anti-waste' candidate.

## GENERAL ELECTION. NOVEMBER, 1922

### A FINAL WORD TO THE ELECTORS OF THE . . . DIVISION

LADIES AND GENTLEMEN,

The Final Battle for your **right to select your own Representative in Parliament** is being fought.

The enemy has been actively engaged since our Great Victory in January, 1921, in 'digging himself in' and consolidating his position.

Our forces are attacking valiantly and with fervour, and the Prospects of Success are encouraging.

But we must **take no risks**. Every man, every woman, must rally for 'the great push' on **Wednesday next, the 15th inst.**

The overthrow of the enemy in this battle will complete the establishment of your **Political Freedom**. His success would mean the re-establishment of the Dictatorship we successfully challenged in our last campaign.

Let our old battle cry, '**Britain for the British**', inspire us.

Fight on to Final Victory.

Yours sincerely,

Printed & Published by, &c., &c.

### FINAL ELECTION MESSAGE

TO THE ELECTORS OF THE . . . DIVISION.

On Wednesday, 15th November, you, the Electors of the Division, will choose the Member who will represent you in Parliament, possibly for five years.

My name will be before you as that of the Official Conservative Candidate, since I have been unanimously adopted by the Conservative Unionist Associations of the Constituency, and have received the support of the Prime Minister.

There is now good reason to believe that the country will return the Conservative Party to power. In that event it will undoubtedly be to the advantage of the Division that its Member should sit on the Government benches.

I have declared my policy in my election address, and in the numerous speeches I have made since the election campaign began.

I stand for peace at Home and Abroad, for economic and efficient administration, and for sane and steady progress.

If I am elected my principal aim will be the restoration of National prosperity, and my immediate task to devote all my energy and capacity to the solution of the unemployment problem.

I further pledge myself to serve your interests faithfully, to keep the needs and wishes of its agricultural, mining, and other workers constantly before me, and use my best endeavours to advance the prosperity of the district.

I am convinced that the policy of the Conservative Government offers, not only what the country needs, but what the country wants. I therefore appeal to you who have stood so steadfastly by Conservatism to take your old place as one of the leading Conservative Divisions of England.

We have reached a turning point in the affairs of the country. There is, consequently, a grave responsibility upon every elector which no patriotic man or woman will wish to shirk. Each of you will have your own opinion, but I beg none of you lightly to reject the claims of the Party that stands, above all others, for peace with honour and security.

Yours sincerely,

In the more literate constituencies where literature can be distributed by post, the election agent will require a large number of envelopes, which should be prepared ready addressed in advance. If the contents are printed matter, the name of publisher and printer must be given.

Should it come to the notice of the election agent that his opposing candidate was ineligible for election even though duly nominated, he would be within his rights in issuing a notice advising electors of the disqualification, e. g. that the candidate was an alien or minor or had been sentenced within the past five years to a term of imprisonment exceeding six months or had failed to file his return of election expenses within due time, &c. (vide rule V), and advising them that any votes given for this candidate would be thrown away.

It is the duty of the election agent and his sub-agents to arrange for public meetings, and for the candidate to speak at them. It is generally considered desirable to get other persons, either well-known orators or persons of local importance, also to speak. Now it is most unwise to leave anything to chance in an electoral meeting, even the audience! If need be, import some 'well-wishers' from outside. Hence it is the duty of the election agent :

(a) to conduct the correspondence with the speakers, on behalf of the candidate ;

(b) to assist in the arrangement of meetings in conjunction with the sub-agents ;

(c) to draft handbills, &c., and to get them printed and sent to the different districts for circulation ;

(d) to arrange that speakers duly arrive at the place where the meeting is to be held, and that proper accommodation is provided for them ;

(e) to arrange for and instruct (if necessary) a suitable chairman.

The success of a meeting depends a good deal upon the chairman, whose opening speech should be brief. His main duty is not to advise the electors but to introduce and support the candidate, and save the latter, so far as in him lies, from inconvenient 'heckling'. Gentlemen who have some local influence are the best chairmen, as, for example, the President of a Co-operative Society. A whole-time salaried servant of the Government should *not* be asked to take the chair. Such a step could only mean trouble for both the candidate and the chairman.

'Whether the meetings be few or many it is desirable that all arrangements should be carried out with close attention to detail. They should be fully advertised by handbill, and by such other methods as may be deemed expedient.'

Occasionally a reliable and systematic distribution can be arranged with the help of a corps of cyclists.

'The speakers should be advised in good time of the place and hour of meeting, and of their part in the proceedings. It is, of course, desirable that the candidate should be well supported by the leading men of each place, including those who are not ordinarily to be found on party platforms, and that the chairman should be a resident who commands the confidence of his fellow-electors.

Some of these matters will necessarily be dealt with through the sub-agents, but the central office ought to keep thoroughly in touch with each district, ascertaining the local needs, and meeting them to the best of its ability.' (Woodings's *Election Manual*.)

It is desirable to print and publish the agenda in advance as follows :

# AGENDA OF PUBLIC MEETING

at

.....

on

.....

*Chairman*.....

1. Chairman's Opening Remarks.
2. The candidate.
3. Opportunity for questions from voters.
4. Resolution :

'That this Meeting heartily approves of the candidate of  
for the of and hereby  
pledges itself to support him at the poll.'

Mover

Seconder

Supported by

5. Vote of thanks to Chairman.

Questions from *voters* should be invited and encouraged. In England this has been brought to a fine art, and the candidate can provoke much local enthusiasm by ready replies. Here, for example, is one attributed to a candidate standing for an agricultural constituency, he being a retired manufacturer from London :

*Q.* Are you in favour of small holdings ? Should every man be entitled to claim an allotment and land be made available for the purpose ?

*Ans.* Yes, I am.

*Q.* What do you know about it ? Have you got a small holding ?

*Ans.* Not yet, but I intend to have one in due course.

*Q.* A small one ?

*Ans.* Yes, quite a small one.

*Q.* Where ? What size ?

*Ans.* A piece of ground 8 feet by 3 in Kensal Green cemetery.

It is not unknown for the election agent himself to arrange a question or two in order that his candidate may acquire merit by the answer. For example a candidate may be asked whether he will vote for a reduction in the duty on wine imported from France. This gives him the opportunity of explaining that revenue must be raised, and that until Government can reduce the tax on the poor man's beer, he would oppose any reduction of the duty on wines, a luxury of the rich, a popular sentiment likely to commend itself to the audience.

The candidate should be on his guard against the 'humorous heckler'. It is better to have your audience laughing with you than against you. A Labour candidate, for example, was asked :

*Q.* Are you in favour of early closing ?

*Ans.* Certainly I am : the earlier the better.

*Q.* Then why not close down now and go home ?

The candidate should scrupulously but firmly decline to be drawn into argument or profitless discussion at a public meeting. He must from the outset realize that he cannot please everybody. His aim must be to please or convince the majority and to give as little offence as possible.

There is no law in India at present on the lines of 8 Edw. 7, c. 66, 'the Public Meeting Act', which penalizes disorderly behaviour 'for the purpose of preventing the transaction of the business for which the meeting was called together', with enhanced punishment if the offence is committed during an election. Such an Act would, it is submitted, be most useful in India, where the education of the elector is a crying need.

Apart from public meetings the question of conveyances is very important. Voters are not infrequently apathetic but may be prepared to join a party for an outing as far as the polling booth and back. Infirm and elderly gentlemen may not feel disposed to walk any distance to vote, but will do so if a conveyance is provided. Now the

candidate cannot hire any conveyance or even accept as a loan free of charge one which is usually let out on hire. He must therefore borrow private (as distinct from licensed) vehicles, and arrange with those who kindly lend them how and where they are to be used and whom they are to convey. This requires a good deal of arrangement. For it is first necessary to obtain the loan of the vehicle, be it bullock cart, elephant or motor car, with driver: then to allot the passengers: and finally to appoint a vehicle superintendent for each polling station to see that drivers do their job properly and promptly: and all without payment.

It remains to deal with polling-day activities, when the election agent and his assistants will be especially keen to see that their candidate's supporters do not allow zeal to outrun discretion. Let us assume that the canvassing has been thorough and efficient: that most of the 'removals' have been traced and a list kept of those which have not: that the candidate has the definite promised support of 30 per cent. of the electorate: and that he has perfected his poll so far as he is able. A close contest appears to be probable. Between 60 and 70 per cent. of the electorate may poll—or less. It is not likely to be more. Is there anything that can be done on the polling day to add to the chances of success? The answer is that it will still need considerable activity and trouble to see that the 30 per cent. promised votes are actually polled, or to discover who makes default and should therefore if possible be fetched up, even at the last moment. Further there is the possibility first of preventing the opposition getting votes which should not be given and secondly of detecting the opponents in any corrupt practice. This introduces us to the 'polling' or personation agent, who should, as far as he can, be intimately acquainted not only with the electors on the electoral roll for that particular station, but also with the result of the candidate's final canvass, as marked on his copy of the electoral roll. Therein he will find against some names, 'Absent—address unknown', against others 'Dead'. Others there may be for whom the election agent will have obtained permission allowing them to vote at a polling station other than that for which they are registered on the electoral roll. Should any one apply for a polling paper in respect of any of these names the personation agent should ask the presiding officer to put the only questions he may put as prescribed by the regulations,—unless he realizes that it is a case where 'silence is golden'. (See Chapter on Personation *ad finem*). The personation agent will also watch the polling and bring to the notice of the presiding officer any infraction of the law or any irregularity in procedure. Beyond that he cannot interfere (*vide p. 20*). It has been held in *Jaunpur* (I. E. P., 120) that it is the duty of a polling agent 'only to make identification in cases where he had personal knowledge'. Voluntary assistants are sometimes used to act as 'checkers' and note down the names of those who came to the poll and thus detect absentees.



'The canvass cards will be found useful for fetching up the voters, and as they vote the cards can be handed back to the committee-room duly endorsed with a big V (i. e. voted), and the name can also be ticked off on the household canvass card. There should be if possible in a thoroughly organized constituency, a committee-room or sub-agent's office close to the polling station. It should not be difficult to borrow a room for the purpose if only for the polling day. No refreshments should be taken on these premises. On the polling day all the workers should attend as early as possible at their respective committee-rooms. Probably the evening before the election agent or sub-agent will have called them together for a few words of encouragement and final advice. Some may be deputed to help the aged or infirm voter : others to look after waverers : the majority will either be helping with the conveyances or helping to check votes recorded.' (Woodings's *Election Manual*.)

It is unwise to appoint any one—especially any one who may be regarded by an election court as a man possessing local influence—to act as checker or to stand near the polling station and ask voters as to how they intend to vote or have voted. Such procedure might be used to establish a charge of 'undue influence'. But where promises are fulfilled there is no harm in recording the fact—nor in the voter going to the committee-room to say that he has voted. Any demonstration close to the polling station is to be deprecated. The candidate usually endeavours to make a tour of most of the polling stations. In India, in some of the large constituencies, he would find this impossible—even with an aeroplane. But the election agent should arrange for some responsible person, preferably the sub-agent, to see that the personation agents are at their posts supplied with all the necessary information, and that the vehicle superintendent is ready to keep up the supply of transport. More than this cannot be done to ensure success. The harvest will, as is usual, depend upon the thoroughness and intensity of cultivation.

It is of the utmost importance that voters should be persuaded to vote early. A rush towards the close of the day is not infrequent. In *Bulandshar East* (I. E. P., 89) the polling station had to be closed as reported by the presiding officer. It was held that the result of the election had not been materially affected. In *Tanjore* owing to floods polling stations were closed instead of being kept open for as many days as might be necessary in cases where the floods made it impossible for voters to reach the polling station. The election was avoided (I. E. P., 225). It is probable that had there been an organization of the kind described in this chapter, the voting stations would not have been closed and the constituency and candidates spared the trouble and expense of a second election.

After the poll all the papers at the various polling station committee-rooms should be packed up and sent, if possible with the accounts brought up to date and a clear account of outstanding expenses, to the election agent at head-quarters.

In England every one connected with an election has to take an oath of secrecy. In India no such oath is administered, but section 14 of Part II of the Indian Election Offences and Inquiries Act, 1920, meets the case :

‘ (1) Every officer, clerk, agent or other person who performs any duties in connexion with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorized by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months or with fine, or with both.’

These sections would presumably apply to a polling agent deputed by a candidate.

The election agent's duties do not end with the closing of the poll. He has to arrange for some one to be present prepared to assist, if allowed, in the counting. A reference to this will be found in the chapter dealing with the duties of the returning officer. He has also the troublesome, yet most important, task of preparing the return of election expenses, after a careful audit of the sub-agents' expenditure. Even if his candidate is successful, he may have to face an election petition, prepare his candidate's defence, and perhaps assist his candidate to file a recriminatory petition. Whether successful or not he should see that his candidate sends out politely worded autograph letters gratefully acknowledging all assistance rendered. Three years is not a long time : and he may again have to requisition assistance.

One word in conclusion on the subject of organization. We have seen that the primary duty of the candidate and election agent is to prevent the commission of corrupt practices in any shape or kind. It has been noted earlier that in any election petition the court will undoubtedly examine the motive. ‘ The question of intention thus becomes essential’ (*Rohtak*, I. E. P., 193 ; *Punjab S.E. Towns*, id. 170). We shall see in dealing with the question of election petitions how very difficult it is to obtain and retain the necessary evidence. Hence throughout the contest the election agent and his workers must follow up quietly but thoroughly any suspicion of corrupt practice or illegal payment not only on their own but also on their opponent's part. All expenditure incurred by the opposition should be noted. An election petition cannot be filed till the return of the election expenses has been made. The election agent will therefore examine with the aid of his sub-agents the return submitted by his opponent to see whether by any omission of expenditure it can be impugned as ‘ false in any material particular ’.

## CHAPTER VIII

### THE RETURNING OFFICER

BOTH in Indian and English electioneering a large number of officers play an important part. There is first the registering officer and his subordinates who prepare the electoral roll. In England in towns or 'boroughs' this post is usually held by the town clerk : in the country, or as it is called a parliamentary 'county' by the clerk of the County Council. The Representation of the People Act, 1918, constituted certain registration areas, and left it to the Minister of Health to pass orders as to the appointment of officers and their deputies. In actual practice the duties of returning officer at parliamentary elections (other than a University election) are discharged by the registration officer or acting returning officer (8 Geo. V. c. 64. s. 30). The Reform Act of 1832 established for the first time a system of annual registration of voters. This was improved by 'The Parliamentary Voters Registration Act', 1843 (6 & 7 Vict., c. 18). Further detailed instructions to the subordinate officers were included in subsequent amending Acts (Representation of the People, 1884; Registration, 1885; County Elections, 1888; and Local Government Act, 1894). The Indian rules and the regulations to be made by local Governments are based on the procedure elaborated by these various Acts, the aim of which is to obtain an accurate register for each constituency of all the persons entitled to a vote and of their qualifications.

In England this is compiled biennially by the overseers of every parish or township on 'precepts' sent by the town clerk or clerk of the County Council. This precept is a form of instructions to the overseers who prepare the rate-demand lists for local taxation, informing them of the nature of their duties and how to discharge them, with a chronological table.

In India the local Governments make regulations under rule IX providing for :

- (1) the authority by whom the electoral roll shall be prepared and the particulars to be contained in the roll,
- (2) the time at which the roll shall be prepared,
- (3) the publication of the roll in the constituency to which it relates,
- (4) the mode in which and the time within which claims and objections may be preferred,
- (5) the constitution and appointment of revising authorities to dispose of claims and objections,
- (6) the manner in which notices of claims or objections shall be published,

(7) the place, date, and time at which and the manner in which claims or objections shall be heard, and may also make such regulations to provide 'for other matters incidental or ancillary to the preparation and revision of' the roll as they may consider desirable.

The arrangements for the preparation and revision of the electoral roll vary considerably as between the different provinces. For the Council of State and the Legislative Assembly constituencies the preparation of the electoral roll is left to the local Governments concerned. It will, however, be for the Governor-General in Council, not the local Government, to direct the preparation of a fresh roll in the case of a central legislature before the operation of the three years referred to in sub-rule (4) of rule IX, or for the amendment or correction of the electoral roll under sub-rule (6).

'The authority to be appointed in this behalf' by the local Government is frequently the returning officer of the constituency. It is not within the scope of this work to deal at any length with the somewhat intricate subject of the registration of voters. The large area in many constituencies in India necessitates the employment in the initial stage of a local subordinate, who may or who may not be as careful and meticulous in the spelling of names or the description of the elector as he should be. If a sitting member or candidate maintains any sort of permanent organization in his constituency, whenever the electoral roll is revised, attention should be paid by the election agent to any mistakes or omissions and their rectification secured. How this may best be done has already been suggested in Chapter I.<sup>1</sup>

The District Magistrate or Collector will probably be the registering officer for all rural general constituencies and the chairman of a large municipality for that urban constituency. In some provinces the subordinate magistracy may do the actual registration, the Collector or Deputy Commissioner being the revising authority: in others special officers may be appointed for the work of revision: in others again it may be left to the Civil Courts, with a power to appoint suitable persons should the number of claims and objections prove very large. The absence of the assistance of the election agent, and, it may be added for most areas, the absence of any keen interest at present in the register, may make registration work difficult. In England the business of revision is got through very rapidly, because in practice the claims and objections are usually made by the party agents or by solicitors fully acquainted with the law. We can only repeat the advice already given that it is the interest of the candidates to see that the lists are as full and as accurate as possible: that the description of the elector and his qualification should be one that admits of ready identification; and that the election agents of the candidates concerned should agree, as far as possible, on claims to be admitted.

<sup>1</sup> Vide p. 3.

In three provinces at present the registering officer will be called on to add the names of female electors to the roll. Tactful and judicious inquiries are indicated. The presiding officer, in the case of *purda-nishin* ladies, may find the task of identification on challenge difficult, and will be materially assisted if the entries in the electoral roll are given in some detail.

Before discussing the duties of the returning officer it is desirable to state for the information not only of Government officers but also of candidates and agents what the attitude of Government officers towards an election should be. The following is laid down in the Government Servants' Conduct Rules. 'Government servant' is defined as including every person holding or exercising any civil office, other than a menial office under Government.

*Rule 22.*—(1) A Government servant may, for the purpose of removing misapprehensions, correcting misstatements and refuting disloyal and seditious propaganda defend and explain in public the policy of the Government. Save, however, as provided in rules 17, 18, 19 a Government servant may not make any communication to the press in regard to the policy or acts of the Government without the sanction of the Local Government or such superior authority as the Local Government may prescribe.

(2) In any action taken by them under sub-paragraph (1) Government servants should, so far as possible, refrain from making any reference to the personality of parties or individuals who may be in opposition to the Government, and when elections are impending they must give no ground for the suggestion that any statements of facts or views made by them have been made with the object of influencing electors in favour of or against any party or individual candidate.

*Rule 23.*—(1) Save as provided in Rule 22 or when acting under the express instructions of the Local Government a Government servant may not take part in, or subscribe in aid of, any political movement in India or relating to Indian affairs. Where there is room for doubt whether any action which a Government servant proposes to take will contravene this provision, he should refer the matter to the Local Government to which or to the Government servant to whom he is immediately subordinate.

(2) A Government servant, who is a whole-time Government servant, may not, by canvassing or otherwise, interfere or use his influence in any way in an election to a Legislative Council, except that he may record a vote if he is qualified to do so, and in that case he should, as far as possible, avoid giving any indication beforehand of the direction in which he intends to vote.

(3) A Government servant, who is a whole-time Government servant, may not, save to the extent permissible in the case of elections to Legislative Councils or unless he is himself a candidate, who is legally eligible and has obtained from proper authority such permission, if any, as is required to enable him to stand for election, take part in elections to Municipal Committees, District Boards and Local Boards.

In England the returning officer in earlier days played a very important part in the election.

The history of this honourable and distinguished office in England is a long one. The post was held originally by the sheriff in his capacity as a Crown officer directly responsible to the King. He gradually made way for the Justices of the Peace as far as judicial functions were concerned. But his executive powers remained and were used in pre-Reform days in the interests of his own political party. Hence we get various statutes containing penal clauses designed to punish returning officers for malpractices. Thus in 1696 an Act was passed (7 & 8 Will. III, c. 7) prohibiting 'false and double returns of members to serve in Parliament' as well as 'contracts, promises, bonds, and securities whatsoever made or given to procure any return of any member'. Another Act passed in the same year refers in its recital to the 'evil practices and irregular proceedings of sheriffs, mayors, bailiffs and other officers in the execution of writs and precepts for electioning of members to serve in Parliament', and prohibits these officers from 'giving, paying, receiving or taking any fee, reward or gratuity whatever for making out or returning any writ or precept'. A wilful offence was made punishable with a fine of £500: or a civil action might lie against the returning officer for the breach of any ministerial duty that might be imposed on him by law, whereby the candidate has lost the election, even if he has acted wrongly without malice. In certain cases the returning officer could be compelled to pay double costs to the candidate. A returning officer guilty of partiality, misconduct, or arbitrary proceedings can still be summoned to the bar of the House of Commons and fined and imprisoned. Lastly, he is liable to six months' imprisonment if he violates the secrecy of the ballot. Every official connected with an election in England has to make and sign a declaration of secrecy either before the returning officer or a Justice of the Peace. The declaration is as follows:

'I solemnly promise and declare that I will not at this election for . . . do anything forbidden by section 4 of the Ballot Act, 1872, which has been read to me.'

Section 4 of the Ballot Act runs:

#### INFRINGEMENT OF SECRECY

'4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to

any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two Justices of the Peace, to imprisonment for any term not exceeding six months, with or without hard labour.' }

It may be noted that the absence of administrative control or supervision over elections by any central department of government has accentuated the necessity for securing the secrecy of the vote, that most important of all the acts of citizenship, by every kind of legal safeguard. In this, as in all the departments of English local Government, no pains have been spared to elaborate and improve the indispensable conditions of a pure and effective democracy. The preparation of the list of voters is now a single operation in England both for parliamentary and municipal purposes.

It would be a distinct improvement in local administration, it is submitted, if the same object could be achieved in India. The returning officer in India is usually a paid official, who has the duties connected with an election entrusted to him in addition to his other duties—without any further cost to the tax-payer, one of the few consequential advantages of the retention of a modified bureaucracy.

In India the duties of the returning officer may be described as follows, his appointment, powers, and duties being under regulations made by the local Government under rule XV :

A. He has to supply nomination papers to any elector who may apply for the same on the proper date. Under rule XI the local Government will appoint for each constituency a date not later than the fourteenth day after the notification calling upon the constituency to elect a member for the nomination of candidates. The notification will appear in the local *Gazette*, but the returning officer will doubtless (as in England) give notice of the date at his office and at such local offices, police stations, registration and post offices as he may deem necessary. Such notice should include instructions as to where and at what time nomination forms are procurable. On these forms will be entered the last hour for receiving nomination papers. As regards a valid notice of election see *Woodward v. Sarsons*.

B. At a fixed time and place he will scrutinize such nomination

papers. Some faults may appear on the face of the nomination paper. He must reject a paper on the ground that the candidate is misdescribed or inadequately described, that the necessary subscription of two *electors* (i.e. persons whose names appear on the electoral roll of the constituency) as proposer and seconder is wanting, that it was not received in due time, that it was not delivered personally either by the candidate himself or by his proposer and seconder together, that two candidates have been nominated on one paper, or because the candidate has not subscribed the paper as assenting to the nomination. It is not his duty to judge whether the candidate is eligible: it is, however, his duty to see whether the candidate is *ineligible*. This will appear from a perusal of rules XI and XII and the amended regulations under rule XV.

The returning officer must therefore satisfy himself that the candidate is not ineligible on any of the following grounds:

(1) **Because he has not appointed an election agent.** The form of declaration will be found on the back of the nomination paper. This must be filled up at least in the case of one nomination paper, and the candidate, if he does not wish to appoint an election agent, must declare himself to be his own election agent. One and one person only can be appointed. Thus if there are two or three papers nominating the same candidate, they should be subscribed by *different proposers and seconders*; if the form on the back is in each case filled up, the same name must appear as election agent. The declaration should contain sufficient information to admit of the identification of the person declared to be the election agent. It is suggested that the father's name, the occupation, and present residence of the person appointed should be given. Any one (with one exception) can be an election agent. If the candidate feels so disposed he could appoint his wife or a minor son. He may not, however, appoint a person who is disqualified under any electoral rule (vide rules XVII and V (3) and (4).

(2) **Because he has not paid the necessary deposit,** Rs. 500 in the case of a candidate for the Council of State or Legislative Assembly, and Rs. 250 in the case of a candidate for the provincial Legislative Council. The deposit must be made 'on or before' the date fixed for the nomination of candidates in rule XII. In the *Attock* case (1, I. E. P., 13) there is an interesting discussion as to what is meant by 'before' a certain date. It may be said that the candidate may either before the day appointed or between 11 a.m. and 3 p.m. on the day appointed for the nomination of candidates deposit the sum required. He may send his nomination paper first and hand the money in later, but his nomination is incomplete and his nomination paper cannot be accepted by the returning officer until the deposit has been made and accepted. The candidate or any one of the four persons he is allowed to bring with him may ask for a receipt. Any one of the five, i.e. the candidate, election agent, proposer, seconder, or 'one other person' may raise an objection.



The 'one other person' will ordinarily probably be the candidate's legal adviser.

(3) **Because the candidate has withdrawn his candidature.** This will be purely a question of fact, as notice of such withdrawal must be in writing. The point might be raised whether a proposer or seconder who had subscribed to the nomination paper of a candidate who, before the day of nomination, withdrew his candidature, could propose or second another candidate. It is submitted that he could, since the action of the candidate should not debar him from exercising all or any of his rights as an elector.

(4) **Because the candidate is ineligible for election** as having incurred one of the disabilities mentioned in rule V, i. e. that the candidate is

(a) an alien whose ineligibility has not been removed by the local Government ;

(b) a female ;

(c) in the case of a candidate for a Legislative Council who is already a member of another Legislative Council or of the Legislative Assembly or the Council of State.

(d) is a suspended legal practitioner, such disqualification having not been removed by an order of the local Government ;

(e) is an adjudged lunatic ;

(f) is under 25 years of age. This would be a question of fact to be decided by the returning officer with or without any summary inquiry.

(g) is an undischarged insolvent ;

(h) if discharged has not obtained a certificate acquitting him of misconduct.

In (d), (e), (g) and (h) the necessary copies of the order of the Court should be produced to sustain an objection.

As regards (a) the returning officer would, it is submitted, be well advised to place the onus of proof on the objector, with due regard to the British Nationality and Status of Aliens Acts of 1914 and 1922.

(5) **Because the candidate has within the past five years been sentenced to a term of imprisonment exceeding six months.** If the offence has been *pardoned* the candidate is eligible. This disability cannot be removed by an order of the local Government.

(6) **Because the candidate has been convicted under Chapter IX A of the Indian Penal Code,** or has been reported guilty of a corrupt practice within the past three years. If the offence under Chapter IX A of the Indian Penal Code is punishable with a term of imprisonment exceeding six months or the corrupt practice is one of those specified in Part I or in pars., 1, 2, or 3 of Part II, Schedule IV (bribery, undue influence, personation, the publication of false statements, or illegal expenditure), the period of disqualification is five years, i. e. it extends over two elections.

(7) **Because the candidate has failed to lodge within due time or has**

lodged a false return of election expenses (vide Chapter VI: Election Expenses).

The disqualifications (6) and (7) can be removed by order of a local Government made in this behalf. At the first general election a not inconsiderable number of candidates were disqualified under (7). The latter disqualification extends also, it will be noticed, to a candidate who, when acting as election agent, failed to make his return of election expenses.

Any disqualification arising from failure to comply with the electoral rules or from the commission of a corrupt practice *should* have been notified in the *Gazette*, and the name of the offending candidate or election agent *should* have been removed from the electoral roll. Though the latter is binding on the returning officer, the statutory disability still exists.

‘The nomination paper is in fact an abuse of the right of nomination, if it is either subscribed to or endorsed by a person who is by the rules declared to be ineligible. In this respect the duty and jurisdiction of the returning officer is more extensive than that of a presiding officer. The reason is simply that the acceptance of votes by persons prohibited from voting is not, in a large electorate, likely to affect the result of an election. Votes improperly received can be struck off by an election court on scrutiny in the event of a close contest. But an improper nomination may allow a disqualified candidate to stand and commit the other candidates and the constituency to the trouble of a contested election. A person who cannot vote cannot nominate, for nomination is the voice or vote of the electors, and becomes the election if no other candidate is nominated.’ (*R. v. Parkinson*, L. R. 3 Q. B., 11, quoted by Parker at page 244).

In this matter the regulations made under rule XV place on the returning officer a duty far more important than that discharged by a returning officer in England, who limits his scrutiny to mistakes or faults apparent on the face of the nomination *paper*: in India he is to scrutinize the *nomination*.

(8) **Because the proposer or seconder suffers from a disqualification** under rule VII which debars him from the privilege of proposing or seconding a candidate. In other words, though his name is on the electoral roll he is disqualified. The returning officer cannot challenge the correctness of the entry in the roll. He cannot inquire whether these gentlemen are qualified, e.g. by payment of revenue or road cess to be on the register: he can, however, entertain an objection based on the proposer's or seconder's *status* as disqualifying them.

(9) **That the signatures of the proposer or seconder have been obtained by fraud.** In *Attock* (1. I. E. P., 3) the election was successfully impugned on the ground that the signature of a seconder had been obtained by fraudulent misrepresentation.

(10) **Because either the proposer or seconder has signed a previous nomination paper.** The regulation provides that in such event the

first of the nomination papers received will alone be valid. The returning officer notes on each nomination paper the date and time of receipt, and gives each a serial number. A case may arise when A. and B. are candidates, A. being proposed and seconded by X. and Y. B. might persuade C. to stand and persuade X. or Y. again to propose or second. Should B.'s misfeasance damage A.'s candidature? The natural precautions lie in obtaining proposers and seconders on whom the candidate can place implicit reliance, or in having two or more nomination papers ready with different proposers and seconders, so that should one fail another can be produced.

(11) **That the candidate is disqualified under rule VI.** Such, for example, would be the case of a European nominated for a rural non-Muhammadan constituency, or if the candidate's name did not appear on the electoral roll of the constituency or on that of some other constituency in the province. In the Central Provinces and in the Bombay Presidency the candidate should be in a position to prove the necessary residential qualification.

There is reason to fear that in some cases more ingenuity may be directed towards objection to the nomination paper at the time of scrutiny than to the education of the electorate. The returning officer therefore has an important task. He is acting judicially, and is not allowed to delegate this duty to any one else except in case of illness or emergency. In event of sudden illness or other cause incapacitating him from attendance, the regulation specifically designates a successor in time of emergency. The returning officer is not bound to receive evidence or to enter upon a long or complicated inquiry. If the objector is dissatisfied with his decision, he can seek relief by an election petition, pending which the returning officer's decision is final. It is submitted that the returning officer would exercise a wise discretion if he allowed any clerical mistake obvious on the face of the nomination paper to be corrected, but he should not allow substitution of proposer or seconder, after the nomination paper has been signed. Even if only one nomination is received, the returning officer should subject this to the same careful scrutiny. Should the candidate be found to be disqualified or the nomination paper be rejected, the procedure indicated in rule XIV (3) would be followed.

The returning officer should see that no one save the persons duly authorized is allowed to be present at the time of scrutiny.

Under rule XI as amended the nomination paper must be delivered personally to the returning officer (or to such other person as may be authorized in this behalf by the local Government) 'on or before' the date appointed for the nomination of candidates. It may be handed to the returning officer either by the candidate himself or by 'his proposer and seconder *together*'. The returning officer should make a point of being in his office between 11 a.m. and 3 p.m. on the dates during which nominations can be received, or seeing that arrangements

are made for the prompt receipt of nomination papers. The returning officer should give each nomination as he receives it a serial number and should also note the date and hour of receipt. If two or more are received together, the serial numbers should be assigned in the order in which they are taken up by the returning officer.

The nomination must be strictly in the form given in Schedule II A. In *Purnea* (I. E. P., 179) it was stated :

‘ The nomination form does not require either a proposer or a seconder to subscribe the name of his father, but as the electoral roll describes electors by their fathers’ names, it would seem to be the returning officer’s duty to ascertain the fathers’ names of the proposer and seconder unless there be other means of identification available.’

It is submitted that the entry of the candidate’s proposer’s and seconder’s numbers on the electoral roll should be an adequate means of identification. The returning officer may, however, ask these persons any questions in order to satisfy himself as to their identity. He can, in fact, it was held in the same petition, hold a summary inquiry in cases where there is any doubt as to identity. He should not act on mere allegation but require proof in support of any objection. The name of the candidate, proposer, and seconder should correspond to that given in the electoral roll under the number of the electoral roll quoted on the nomination form. It must, in fact, be sufficient to establish the identity of the candidate, proposer, and seconder with those persons as described in the nomination paper (see *Purnea*, I. E. P., 180). It is desirable that names should be given in full, as that of the candidate as given in the nomination paper will be reproduced on the ballot paper. Thus instead of Babu K. D. Bannerji it is better to write Kali Das Bannerji. It is not necessary in India to add the profession, occupation, or usual address. The signature on the nomination paper need not be made in the presence of any one or ‘witnessed’ or ‘attested’ (*Basti*, I. E. P., 47). The document can be handed to the returning officer already signed. It is not, however, necessary that the signature should be made in the presence of the returning officer. Where the candidate together with his proposer and seconder can be present it is recommended that this course should be followed, as the nomination paper cannot be altered or added to after signature (*Harman v. Park*, 7, Q. B. D., 369), unless perhaps to correct an insignificant or clerical error : if any material addition or alteration is needful, a fresh nomination paper should be filled up and signed (Parker, 241).

A candidate may be nominated more than once. To guard against any danger of a faulty nomination paper it is wise to take this precaution. Further it affords the candidate the opportunity of showing that he has the support of all classes or of people from various parts of the constituency.

As to the declaration in writing appointing an election agent which must in accordance with rule XI ‘accompany’ the nomination paper,

it would seem that if such declaration is filed with a nomination paper within time, i. e. before 3 p.m. on the last day fixed for receiving nomination, as given in the foot-note to Schedule II A, it will be sufficient, even if a previous nomination paper may have been delivered to the returning officer without such declaration at an earlier time. The form of the declaration will be found on the back of the nomination paper. It need not be stamped. The improper refusal of a nomination paper is an irregularity which materially affects the result of an election within the meaning of rule XLIV (c) (*Purnea*, I. E. P., 180; *Rohtak*, 190). The improper acceptance of a nomination paper is, however, final, unless the order is reversed on election petition.

‘Such acceptance commits the constituency and the candidates to the expense and trouble of a contested election, whereas the making and allowance of objections may, but will not always, result in an election petition. A returning officer is therefore naturally disposed to admit any nomination paper rather than to disallow it, preferring to allow the electors to exercise their choice. Should the candidate whose nomination paper has been the subject of objection be unsuccessful at the poll any further prosecution of the objection by his opponents becomes immaterial. ‘But the proper course is for the returning officer, without regard to consequences, to decide all objections that he has jurisdiction to decide’ (Parker, p. 252).

C. As soon as it is known as a result of the scrutiny by the returning officer how many candidates will contest an election, if there are more candidates than there are vacancies, the returning officer has to arrange for the taking of a poll in accordance with rule XIV and regulations made by the local Government under rule XV. ‘If the number of such candidates is equal to the number of vacancies all such candidates shall be declared to be duly elected’ (XIV (2)). Under rule XIX formerly the time allowed to the candidate within which to file his return of election expenses began to run from the date of this declaration by the returning officer. As amended, however, in 1923 rule XIX (1) allows 35 days for the purpose from ‘the date of publication of the result of an election under sub-rule (9) of rule XIV’. It will be noticed that the returning officer must *without delay* report the result of the election to the Secretary to the Council and the name or names of the candidate or candidates elected shall be published in the *Gazette*. This report should be dispatched at latest on the morning following the day of scrutiny, but preferably the same evening, so that there may be no avoidable delay in publishing the result either in an ordinary or extraordinary *Gazette*. The latter might fitly in one edition include the results of all uncontested elections.

The returning officer is strongly advised to maintain an ‘advance’ diary, and also to post the same up by daily entries, when they fall due, of duties finished. He will be wise to note the date and time of receipt on any other notice or return which he may receive from a candidate or election agent, since dates play so important a part in

election procedure. The detailed arrangements for the poll are dealt with under the head 'Presiding Officers'.

The general duties of the returning officer in connexion with the election are usually given in executive instructions from the local Government. They vary according to the class of constituency. In a general constituency where votes must be delivered in person they include the selection of polling stations (to be announced as soon as possible), the appointment of presiding officers and clerks for the same, and the equipment of the polling stations with the necessary paraphernalia, including an adequate supply of ballot papers. The printing of the latter may be a matter of some difficulty. It cannot be commenced until the scrutiny of nomination is completed: it must be finished three or four days before the date fixed for polling to admit of their dispatch to distant polling stations. In special constituencies where voting by post is allowed or (owing to the amendment of 1923) in a landholders' constituency, the issue of the necessary ballot papers to the voters by post will demand the returning officer's attention.

The other duties of the returning officer are :

D. The counting of votes (see Chapter X).

E. The reporting of the result of the poll.

F. The arranging for the custody of the various election papers.

G. The receipt of the return of election expenses (see Chapter VI).

It will be seen from this abbreviated survey of his duties that the returning officer is the person mainly responsible for the conduct of the actual election. It is to him that candidates and election agents should look for instructions and advice: it is before him that objections can be lodged as to the validity of votes, or complaints as to personation and undue influence or other corrupt practices. His successful management of an election will, however, depend to no small extent on the efficiency of the presiding officers and their assistants, whose duties form the subject of another chapter.

## CHAPTER IX

### THE POLLING STATION

THE large area of many constituencies means a large number of polling stations. There must be one presiding officer and at least one polling clerk or 'polling officer' for each such station. An Indian district at time of polling is therefore likely to require the services of all the officials therein, whether judicial or executive, including Superintendents of Excise, Sub-Registrars, and subordinate Revenue officials. Even then the supply may not meet the demand and recourse may be necessary to unofficial agency such as Honorary Magistrates, Municipal Commissioners, Members of the District Board, and the like.

The Regulations made by local Governments under rule XIII<sup>1</sup> for the first general election differed considerably (see Chapter XIII on Personation). It is believed that for future elections an attempt will be made to introduce as far as possible a more uniform procedure at the polling booth. Meanwhile perhaps the easiest general method of instruction for a presiding officer is to be found in the reproduction of the instructions given to presiding officers in England, given in the Appendix II B. Indian electoral law is based on and follows that observed in England, and, in the matter of the recording of votes, there should be no marked departure therefrom. Some provinces may, however, wish to retain regulations designed as additional precautions against personation, which must of course be strictly observed. Failing such, the best advice to presiding officers is 'Throw the onus of detecting or preventing personation on the candidate. It is better and safer to let him challenge your decisions by an election petition for the removal under rule XLIV (1) (c) of votes improperly accepted, than for you to be the subject-matter of a petition, because by refusing votes you have committed an irregularity sufficient materially to affect the result of the election'.

The principal duties of a presiding officer are :

- (1) To see that opportunity is afforded to all electors who may wish to vote to record their votes.
- (2) To maintain the strict secrecy of the ballot.
- (3) To see that the election is free and unrestrained.

It is also his duty to see that ballot papers are not given to persons who are not electors, but any precautionary steps he may take in this respect should not impair the efficacy of his arrangements for the three *principal* duties detailed above. If he required (as was actually con-

<sup>1</sup> Now rule XV.

templated in one province) *every* elector to prove that he had a right to vote, he would run a grave risk of denying a considerable number of electors the opportunity of voting. If he allowed each elector to undergo identification by the candidate's representatives, not only would much time be wasted, but the secrecy of the election might be imperilled, and the door opened to the exercise of undue influence.

Even as it is, a foolish polling agent can delay proceedings; and may thereby, if it is proved that he challenged voters unnecessarily and without grounds for suspicion, endanger his candidate's seat, but mere challenges unsupported by any evidence of personation should be discouraged by the presiding officer. The presiding officer and his assistants cannot possibly be in a position to know or to recognize each and every elector. The polling agent if he has worked hard in a well-organized electoral area may be. The latter should reserve his objections to cases where he has good reason to suspect personation. The presiding officer should ordinarily allow every one who comes forward to demand a ballot paper to vote. **The electoral roll is binding on him.** It may be obviously incorrect: even so it is no part of his duty to revise the decision of the revising authorities. Under rule IX (3) 'the orders made by the revising authority shall be *final*'. The presiding officer must therefore realize the difference between mistakes in description and mistakes in identity. The essential characteristic of the system of voting by ballot papers is its secrecy.

'In one only of the three kingdoms the ballot helped to make a truly vital difference: it dissolved the political power of the Irish landlord. In England its influence made for purity, freedom and decency, but it developed no new sources of liberal strength.' (Lord Morley, *Life of Gladstone*, ii. 370.) The method of secret voting was brought into England from Australia by the Ballot Act of 1872 (35 & 36 Vict., c. 33) which, with its schedule giving the rules for Parliamentary Elections, should be studied by any one who wishes to appreciate the niceties of the system. The material section is as follows:

'In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter, having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called 'the presiding officer') after having shown to him the official mark at the back.'

It will be noticed that the 'official' mark is essential, and ballot papers which do not bear this mark (preferably made by a stamping



machine) should at once be rejected by the returning officer when counting the votes.

This system is not unknown to India. It has been for some time followed in municipal elections in Madras and Bombay, and the regulations for elections for the Reformed Councils generally follow the rules hitherto observed. There was, however, an important difference in the procedure of the two provinces. In a Madras municipal election the voter is given, as in England, a voting paper with the names of the candidates and their descriptions in alphabetical order. He must make his mark against the name of the candidate for whom he wishes to vote, and then place his ballot paper in a box provided for the purpose. In Bombay, until comparatively recently,

‘the voter shall then alone take the voting paper given to him to a place where there will be put as many boxes as there are candidates with slips bearing the names of candidates attached and sealed with the municipal seal by the President of the Municipality or by such councillor or officer as the President appoints in this behalf, in such a way that the box in which he places his voting paper may not be known to any person in the polling station, except the officer appointed by the Collector to supervise the depositing of voting papers, and shall drop it in that officer’s presence into the coloured box intended for the candidate whom he wishes to vote for and bearing his name. If, however, the voter does not desire to drop the voting paper into any of the boxes he shall destroy the same in the presence of the officer aforesaid.

When the number of candidates exceeds five, the boxes shall be distinguished by securely affixing to them under the municipal seal, as aforesaid, things, articles, or substances which are well known to the generality of voters.

The colour, thing, article or substance representing each particular candidate shall be made known at the polling places at least forty-eight hours before the election is held.’

The system of coloured boxes has been abandoned in the Bombay Presidency, and is, it is believed, now only followed in Bihar and Orissa and the Central Provinces.

In these electoral areas where there is a large preponderance of illiterate electors this system has obvious advantages. Elsewhere the presiding officer must assist the illiterate or physically incapacitated voter ‘in such manner as may be necessary’. Also the making of the mark **X** on the ballot paper by the presiding officer in a large constituency will take time, and it may in practice defeat, when there is a large number of illiterate voters, any real attempt at secrecy (1, I. E. P., 24 *Parganas*, 249). There is also the difficulty of spoilt papers, when the mark is made in such a way as to lend itself to the future identification of the voter, or so as to be indefinite or uncertain. This may greatly increase the work of the returning officer at the time of counting the votes. There are, however, certain disadvantages connected with the ‘coloured box for each candidate’ system. It is

necessary to have a clerk or polling officer on duty in the compartment where the boxes are placed to see that nothing but a marked ballot paper is placed in the box. When the voter marks his ballot paper with a X, he can place the ballot paper in a box *coram populo*, and none knows how he has voted. Under the other system the boxes must be placed in a compartment separate from that in which the presiding officer is seated. Secondly, where an election for two constituencies is in progress, as for example for the Provincial Legislative Council and for the Legislative Assembly, the number of boxes may be found to be disconcerting, and there ordinarily must be some one on duty to see that the elector records his vote for the right constituency. Thirdly, it is difficult to arrange for a recount on scrutiny, once the papers have been removed from the ballot box. The only method would be to count one box at a time, replace the papers in that box, and reseal the same. This involves allowing the candidates to know how many votes they obtained in each polling station. Fourthly, in the case of officers deputed on duty to a polling station other than that for which their names are on the electoral roll, it is necessary for them to let the returning officer know for which candidate they wish to vote, in order that their ballot paper, transmitted through the presiding officer, of the polling station at which they are on duty, may be placed in the box of the candidate for whom they wish to vote. Finally it is more expensive. The cartage bill for a large number of ballot boxes, the cost of their construction, the additional staff required for supervision at the poll, add considerably to the cost of a contested election. Against this may be set the probable absence of any invalid ballot papers and the fact that the ballot paper cannot be challenged on scrutiny as being incorrectly marked by the voter, but only as lacking the official mark.

It is curious that even in England 'spoilt papers' should still be common. There have been many decisions as to what constitutes a valid mark. Mr. Justice Hawkins in *Cirencester* (1893 : 4, O'M. & H., 196), enunciated the following principles which may be of interest to returning officers :

.' With regard to those votes as to which objections have been raised to the mode in which they were marked by the voters, we have proceeded upon what we think was the true intention of the Legislature in framing the Act of Parliament. We have, first of all, asked ourselves whether the voter received his paper with the intention to vote. The mere fact that he has applied for and received a voting paper affords abundant evidence that such was his intention. Then we have looked at the face of the paper itself, with a view to see whether or not the voter has by any mark clearly indicated the person for whom he wished and intended to vote : and if we have found such a mark we have upheld the vote, regardless of the very technical, and as we think unsubstantial, objections which have been allowed in some of the earlier cases to be found in the reports of election cases, our view being that we ought to interpret the Ballot Act liberally, and, subject to

other objections, to give effect to any mark on the face of the paper which in our opinion clearly indicated the intention of the voter, whether such mark were in the shape of a cross, or a straight line, or in any other form, and whether made with pen and ink, pencil, or even an indentation made on the paper, and whether on the right or the left hand of the candidate's name, or elsewhere within his compartment on the voting paper. Of course, every deviation from the course pointed out in the rule tends to create difficulties which may be avoided by a rigid observance of it. It is highly prudent therefore to adhere to it, though we do not think it essential. . . .

Where there are marks and blotches of a very irregular character on the voting paper, which might well be mistaken as indications of temporary unsteadiness in the voters, who thereby imperil their votes, the Court will endeavour to discover whether, although obscured by the blots, blurs and other marks, there existed obvious indications on the part of the voter of an intention to vote without a thought of leaving behind a trace to enable him to be identified. . . . Of course, if it is on the face of the ballot paper left in doubt whether the man intended to vote for one candidate or the other, the weight of the objection that the vote is uncertain is obvious, for the simple reason that one candidate has just as much right to claim the vote as the other, and so it ought to be counted for neither, and the statute so enacts.'

The leading case dealing with the duties of the returning officer and the presiding officer at a polling station is *Woodward v. Sarsons* (1875). In 1876 a Select Committee appointed by the House of Commons 'to enquire into the working of the existing machinery of Parliamentary and Municipal elections' unanimously recommended that every returning officer should be given a copy of this case. This judgment is reproduced as Appendix III.

Another alternative to the Bombay system is to have the boxes numbered like railway carriages I, II, III. But even in this system there is the chance of confusion, where one or more elections are being held on the same day, as between the boxes of the different constituencies. It is also a fact that colour blindness is more common than is generally believed. The attendance of a polling officer to see that the papers are properly put into the ballot box seems indispensable under either system. A frequent change of officers deputed for this duty is indicated. One or other of these systems for the recording of votes will be followed, and in both the duties of the presiding officer and his assistants, who are in regulation 9 (2) designated 'Polling Officers', are the same.

The presiding officer must keep order at the polling station, see that the election is fairly conducted, that secrecy is observed, regulate the number of electors to be admitted to the polling booth at one time, and exclude all persons other than his clerks, the candidates, or any duly authorized agent (not agents) of each candidate, the police on duty, and such persons as may be necessary to identify the electors. He is responsible for the receipt, issue, and safe custody of all papers and property connected with the recording of votes. He must open and

close the poll strictly at the hours appointed by the local Government. In England a poll is considered closed by the refusal to deliver ballot papers to voters. Those already given out to voters can be deposited after the hour fixed for closing (vide Regulation 11). But it must be remembered that except in certain special constituencies (University, Chambers of Commerce, Mining, Planters', and Landholders') votes cannot be sent by post, and therefore the elector must present himself at the polling station before the hour fixed for closing. In England if the polling station is not near a public building containing a clock, the presiding officer sets his watch at the same time as those of the agents of the candidates when the poll is opened. A rush of voters during the closing hour of the poll is curiously common, and the presiding officer should be strict and accurate as to the hour of closing (vide *Bulandshahr East*: 1, I. E. P., 87).

It should hardly be necessary to point out that the polling station primarily exists for the convenience of electors, not for the detection of attempts at personation or as a canvassing ground for the agents of candidates. The main object of the presiding officer should therefore be, as already stated, to study the convenience of the electors, to maintain the secrecy of their votes, and to give every one who may appear between the hours of opening and closing an opportunity for recording his vote free from any molestation. Police should be present to see that there is no obstruction to traffic and no noise in or near the polling station. Notices, giving the necessary directions for ingress and exit and stating the electoral area to which the polling station relates, with the numbers, and if necessary the villages or wards, of the electors taken from the electoral roll, should be posted. Special arrangements in populous centres may be required as regards vehicles setting down their occupants.

It may happen that an elector applies for a ballot paper, and it is found that one has already been given out to a person representing himself to be that elector. The presiding officer will then give this second applicant (assuming that he has duly answered the questions given in regulation 19), a 'tendered ballot paper' of a colour different from the other ballot papers. This will not be placed in the ballot box, but will be endorsed with the name and electoral number of the elector by the presiding officer and set aside in a separate packet. Such 'tendered ballot papers' will not be counted by the returning officer, but at a scrutiny by Election Commissioners the two votes under the one electoral number would be examined. The personating vote would be rejected, and both votes could be used as evidence in any trial on the charge of personation.

The candidate or his agent, may challenge any voter, and it is for the presiding officer to satisfy himself by asking three prescribed questions. He may disallow the vote, in which case no voting paper would be given to the elector. In England a presiding officer must give

into custody any person against whom the charge of personation is brought. If he allows the vote to which objection is taken, it will be recorded. It might be useful, however, for the presiding officer to take the thumb impression of the voter either on the back of the ballot paper or on another piece of paper, to be endorsed with the name and number of the elector to whom objection has been taken, as well as the name of the objector.

All these precautions are by no means superfluous. A case is on record where ticca gharri drivers, whose names were still on the municipal register, climbed out of their graves to vote for a candidate !

It will be found useful to have in attendance at (but not necessarily inside) the polling station certain persons, either those whose services have been utilized in the preparation of the electoral register, or those who can from the nature of their duties be relied on as able to identify an elector. Such would be for example Tax Collectors in Municipalities, Tahsildars or Patwaris, Panchayats or even the humble village chowkidars. The election agent will be wise if he also arranges for identifiers in any case (e. g. where a man has been absent for some time from his home) where he anticipates a challenge on the ground of identity. Such identifiers could be ready near at hand and their evidence might be tendered to the presiding officer.

It rests with the presiding officer to decide as to the identity of any voter and his right to vote, and his decision is final. He may (*Purnea*, 1, I. E. P., 179) hold a summary inquiry, but cannot challenge the correctness of any entry in the electoral roll.

The presiding officer must be in a position to show that ballot papers were given to all electors who asked for them, and at the same time take care that no record is kept in the electoral register of the serial number of any ballot paper given to an individual elector. The reason for this is that it is essential that the way a man has voted should remain secret. This is arranged as follows. All voting papers are serially numbered, and as each elector is given his ballot paper the elector's number on the electoral roll is written on the counterfoil of the ballot paper, and a mark is also made against his name in the electoral roll.

Each ballot paper must be marked by the presiding officer on the back with an official mark. This is sometimes done with a perforating machine. In Madras at the last election the presiding officer had to initial the ballot paper, and the voter was expected to sign or affix his thumb impression to the counterfoil. Under rule XX of the schedule to the Ballot Act 1872: 'He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same country.' It is the presiding officer's duty to see that this official mark is placed on every ballot paper before a voter puts the paper in the ballot box and after his name has been 'ticked off' on the electoral roll

The work of the presiding officer can be rendered easier if attention is paid to the arrangements at the polling station. Various kinds of buildings will be utilized : their size, as also the size of the ballot box or the use of more than one ballot box, must vary according to the probable number of votes to be recorded, and also according to the class of voter, literate or illiterate. But the following general features of a polling booth in England should be reproduced as far as possible.

The polling station should preferably be at some little distance off the main road, and police should be on duty to prevent any loitering near the entrance. No agents should be allowed to bring voters right up to the doors of the station. The last part of the approach should be taken by the voters alone. It is essential wherever it is likely that a large number of votes will be recorded, that there should be a separate entry and clearly defined exit, and that voters should be able to form up in a line to pass into the voting station (known in England as 'a queue'). At the entrance one or more constables should be stationed to regulate the traffic and admit just so many voters as can conveniently record their vote at one time according to the directions of the presiding officer. In practice it works out that as each voter moves into the room or partition of the main room in order to record his vote, another voter comes into the main room. The presiding officer can conveniently sit with his back to the main entrance door facing his clerks, and the entrance to the actual polling room, where the coloured box system is in vogue. Where ballot papers are marked the ballot box can be on the table in front of the presiding officer. The candidates' agents may sit to his right and left. Under this arrangement when a voter comes in he passes between the presiding officer and the polling agents nominated by the candidates up to one of the clerks' tables, where all that transpires takes place in full view of the presiding officer. The voter gives his name and number on the electorate roll (if he can remember it), and the clerk dealing with that portion of the electoral roll then marks his name in the register, &c., and delivers to him the voting paper, taking his signature or thumb impression on the counterfoil, if this tedious procedure is prescribed by regulation. Election agents may like to give a voter a slip or 'polling card' (vide Chapter III, p. 22) with his name and number written thereon. The voter brings his ballot paper to the presiding officer to be stamped. It will probably be found convenient in the larger polling stations to have four clerks, who should discover *quietly* who the voter is, look up the necessary reference in the register and read it out aloud when the paper is ready for stamping. Behind the clerks, in the Central Provinces and Bihar and Orissa, are screens or a screen, or preferably a separate room with a separate exit. In this room the polling boxes are placed in charge of an assistant polling officer, who should be changed frequently. Care should also be taken to see that the roster of attendance for this duty is not known. This clerk only

gives such assistance as may be necessary in the matter of placing the vote in the ballot box. He will also see that nothing except a voting paper is put in any box. In other provinces the ballot box can be on the table near the presiding officer, there being private compartments where electors may mark their votes. In the case of an illiterate voter who has to make a mark, the presiding officer himself must (if the English procedure is followed) mark the vote on a ballot paper according to the direction of the voter. Where, therefore, the number of illiterate voters is likely to be large it may be found convenient for the presiding officer to sit near the entrance to the partition dividing the actual polling booth from the rest of the room. He can then possibly receive the instructions of the voter without the other persons present hearing them.

Persons required as identifiers should preferably remain outside the main room, coming in only when their services are required.

If it can be so arranged the voter should then pass on out through the booth where he has recorded his vote and not return through the main office. A temporarily enclosed verandah at the back of the main room makes a convenient polling booth. A constable should be placed at this door to see that it is used only for egress, not ingress, and that voters record their votes without undue delay and go out quickly. Any one who has seen the difference between the issue of tickets at a railway station in England and India will realize the advantage, indeed the necessity, of reducing the arrangements for voting to a system, of allowing only one name to be called out at a time, and of restricting the polling agents of the candidates to their duty of challenging a vote on the grounds of personation. Not more than one polling agent for each candidate may be allowed inside the station. He should be duly authorized by the returning officer on the request of the candidate. It is probably in the actual polling that the greatest difficulty will in keenly contested elections be experienced in India. It is, therefore, of the utmost importance that all arrangements should be made well in advance. The assistants and all concerned in the election, including the candidates' polling agents if they will attend, should receive detailed instructions previous to the poll. In England it is customary to have a rehearsal showing the clerks, police on duty, identifiers, &c., exactly what they should do. Nor should the presiding officer neglect the paraphernalia of the polling booth. An election in England (*Hackney*, 1874: 2. O.M. & H., 81) was held to be void, as delay took place through the omission of the returning officer to provide sufficient ballot boxes, stamps, and other materials. In two of the polling places no poll was taken.

An election, however, will not in India be set aside by an election court unless it can be shown that the omission or failure to comply with the rules *has* (not may have) 'materially affected the result of the election' (rule XLIV (a) and (c)).

As regards the polling station such irregularity might be any of the following :

(i) Improper reception or refusal of votes, or the reception of votes which are void, on an extensive scale.

Under this head would come the votes of innocent personators, of persons wrongly entered on the electoral register, or persons who disregarded the proviso to rule X (1).

(ii) Opening or closing the station at wrong hours (*Bulandshahr East* : 1, I. E. P., 88).

(iii) Alteration of site of polling station without due notice (*Salem and Coimbatore cum Arcot* : 1, I. E. P., 204).

(iv) Malpractices during polling brought to the notice of the presiding officer (*Darbhanga, North-east* : 1, I. E. P., 104).

(v) Absence of official mark on a large number of ballot papers.

(vi) Lack of secrecy in the arrangements for the recording of votes (24 *Parganas* : 1, I. E. P., 249). And generally,

(vii) Any non-compliance with the mandatory provisions of the electoral rules or regulations (*Rohatak*, 1, I. E. P., 186-8).

In Appendix II B are given the very detailed instructions issued to presiding officers in England, adapted to Indian conditions. It is not suggested that all these should find place in regulations made by local Governments ; but it may be assumed that such regulations are based on an endeavour to reproduce, with due regard to local conditions, the procedure observed at a polling station in England. They will, it is hoped, convey to officers and candidates some idea of the minute attention to detail which accompanies a parliamentary election in the United Kingdom.

The presiding officer must exercise tact, firmness, patience, and common sense. It is, for example, for him (and not for the candidate or personation agent) to decide whether a lunatic elector is in fact so deranged in his intellect as not to understand what he is doing, or whether he is enjoying a lucid interval. Similarly he should only refuse to deliver a ballot paper to a drunkard, if the latter ' appears wholly incapable of appreciating what he is doing ' (Rogers, vol. II, p. 118).

In conclusion it may be pointed out that co-operation between the presiding officer and the polling agents will expedite matters : any friction must inevitably cause delay. A strict observance of the rules and careful attention to accuracy and punctuality should not be incompatible with a mutual desire to render assistance. The Indian voter will need all the help he can get in most of the polling stations, and will doubtless be grateful to that candidate who himself or by his agent does most to guide his faltering footsteps along the path of democratic progress.



## CHAPTER X

### THE COUNTING OF VOTES

IN some provinces the local Government, in others the returning officer, will appoint a date, time, and place for the counting of votes. This cannot, as in England, take place immediately or the next day after the closing of the poll, because in some of the larger rural constituencies it may take three or even more days for the ballot boxes from an outlying polling station to reach head-quarters. The greatest care should be taken to ensure the safe transit of such boxes under reliable custody. Any outer covering should be sealed, and the aperture on the top of each box should be so closed that nothing can be introduced into the box. A receipt for their delivery should be obtained, and the returning officer will be well advised to arrange that each box is examined when it arrives to see that it is locked and the seal or seals intact. The date and time of receipt should be noted. When all the boxes have been received the returning officer will proceed to count the votes, the date, place, and time having doubtless been fixed and notified to the candidates in advance, regulation 28. In England under rule XXXIII of the Ballot Act,

‘the returning officer, his assistants and clerks, and the agents of the candidates and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.’

Under rule LII the candidate must send to the returning officer ‘at least one clear day before the opening of the poll’ the name and address of every agent appointed to attend the counting of the votes. In India the persons who may be present at the counting are those specified in rule XIV (6), viz.: (1) the candidate; (2) the election agent of each candidate; (3) one representative of each candidate, authorized in writing by the candidate. These gentlemen must assist in preserving the secrecy of the ballot. They may not take actual part in the counting, can be required to remain at a little distance, and though they must be in a position to be able to see the ballot papers, they have no right to see the serial numbers on the backs of the papers. This, of course, is in order to prevent any one detecting how a man has voted. It should be unnecessary to point out that if in even a single case a candidate’s agent were able to say to the voter, ‘You promised to vote for A: I have seen that you voted for B,’ all confidence in the secrecy of the ballot would be destroyed in that part of the constituency. In England at a recount judges have been known to take the precaution of folding over the ballot paper so that the serial number

on the back cannot be seen. They are always most reluctant to order production of the counterfoils giving the elector's serial number, and under section 12 of the Ballot Act 'no person who has voted at an election can, in any legal proceeding to question the election or return, be required to state for whom he has voted', though if he so wishes he may volunteer the information. This salutary provision is reproduced in section 8 of the Indian Elections and Inquiries Act, 1920. The counting agents are not entitled to note how many votes a candidate obtained in a particular electoral area or polling station. The result of the first count under regulation 30 (a) of the contents of each ballot box separately is usually given privately to the returning officer on a slip of paper and not disclosed, and the supervision of the counting and scrutiny of ballot papers by the candidate or his agents should preferably not begin till the papers have *all* been mixed up. Here then we meet one of the difficulties connected with the 'coloured box system'. If it is desired to keep the ballot papers for a recount or scrutiny, this can only be done by returning the ballot papers to the box from which they were taken, and this must necessarily involve the disclosure of the number of votes given for each candidate at each polling station. That this is undesirable is clear. At Muddinagar, let us suppose, the sub-agent has had ten definite promises. He learns that there are only nine votes in the red box. His register shows that all ten voted. He can easily on inquiry by a process of elimination discover who 'ratted'. Even his inquiries may tend to shake the fundamental belief in the secrecy of the ballot, so essential to a free election.

Is this much pother over a small matter? Possibly, yet in the general election in England in 1922 it was reported of one constituency that the return of the poll was delayed for two days because the votes had to be counted seven times. Each time the result was different, and on the last occasion the total number of votes had grown less! This trouble was attributed to the fact that the room was overcrowded, and that sufficient precautions were not taken to prevent the agents of the candidates handling the ballot papers. The following arrangements for counting are suggested, apart from the detailed instructions to be found in Appendix II C.

At the top of the room or hall, and if possible on a raised dais such as will be found in every court room, should be placed tables at which the returning officer can sit with the candidates to his right and left. There should be a police constable on duty at the door, and none should be allowed to enter or leave the room without the returning officer's permission. The counting clerks should be seated at tables within full view of the returning officer. The agents of the candidates should be allowed to stand or to move about in order that they may be able to watch the counting. They may object to any vote on the grounds detailed below. The ballot paper under objection should then be

handed by the counting clerk to the returning officer for his decision. The candidates or their agents should not be allowed to *handle* any ballot paper.

We may now discuss the points to be remembered by the returning officer in event of an objection as to the validity of a voting paper. In this respect the regulations in the various provinces differ slightly. In the case of Bihar and Orissa and the Central Provinces the marking of a ballot paper only occurs in special constituencies. The regulations quoted are those which were in force at the general election of 1920. They may have been altered, and the reader is advised to obtain the latest edition of the regulations made in his province.

*Madras.*

21. (1) Any ballot paper which is not duly marked or on which votes are given to more candidates than there are members to be elected or on which any mark is made by which the voters may afterwards be identified, shall be invalid.

(2) If more than one cross is placed against any candidate's name they shall count only as one vote in his favour provided that the voter has not placed crosses against more candidates than there are members to be elected.

(3) If the cross or any one of the crosses is so placed as to render it doubtful to which candidate such mark is intended to apply, the vote concerned, but not the whole ballot paper, in the cases where more than one vote can be given on the same ballot paper, shall be invalid provided again that the voter has not placed crosses against more candidates than there are members to be elected.

*Bombay.*

(2) The Returning Officer may reject any voting paper on or by which the voter has recorded more votes than he is entitled to, or which bears any writing or mark by which it is, in the opinion of the Returning Officer, intended to be identified, or which is unmarked or void for uncertainty.

*Bengal.*

28. Any ballot paper which is not duly marked, or on which more than one mark is placed against any candidate's name, or on which votes are given to more candidates than there are members to be elected, or on which a mark is placed in such manner as to make it doubtful to which candidate it has been given, or on which any mark is made by which the voter may afterwards be identified, shall be invalid.

*United Provinces.*

20. The voting paper shall be invalid if it is not duly marked or if a cross is placed opposite the name of more than one candidate or if it is so placed as to render it doubtful to which candidate the vote was intended to be given, or if more than one cross is placed against any candidate's name or if any mark is made on the voting paper by which the voter may afterwards be identified.

*Punjab.*

A voting paper shall be invalid if it is left blank, or if it is marked with a cross opposite the name of more than one candidate, or with more than one cross opposite the name of a candidate, or with a cross so placed as to render it doubtful for which candidate the elector intended to vote, or with any mark by which the elector may afterwards be identified.

*Bihar and Orissa.* (The University Constituency.)

6. Neglect on the part of an elector to comply with any of the instructions contained on the face of the voting paper shall render the vote invalid.

The instructions are as follows :

1. Each elector has one vote.
2. He shall vote by placing or causing to be placed the mark **X** opposite the name of the candidate for whom he votes.
3. The voting paper shall be invalid if the mark **X** is placed opposite the name of more than one candidate, or if it is so placed as to render it doubtful to which candidate such mark is intended to apply.

*Central Provinces.* Regulation 17 (1) (b).

The returning officer shall reject any voting paper on which the voter has recorded more votes than he is entitled to or has placed more than one cross against any one candidate's name or which bears any mark by which the voter may afterwards be identified, or which is not duly marked.

It is to be hoped that in course of time the regulations as to the counting of votes will be the same for all the provinces. Uniformity in this respect will greatly facilitate a recognized corpus of election law for the whole of British India and Burma.

## CHAPTER XI

### BRIBERY AND TREATING

#### SCHEDULE IV : PART I

(See Rules V, VII, XXII, XLIV, and XLVII)

The following shall be deemed to be corrupt practices for the purposes of these rules :

#### PART I

##### *Bribery*

1. A gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratifications to any person whomsoever, with the object, directly or indirectly, of inducing—

- (a) a person to stand or not to stand as, or to withdraw from being, a candidate, or
  - (b) an elector to vote or refrain from voting at an election,
- or as a reward to—

- (a) a person for having so stood or not stood or for having withdrawn his candidature, or
- (b) an elector for having voted or refrained from voting.

*Explanation.*—For the purpose of this clause the term ‘ gratification ’ is not restricted to pecuniary gratifications or gratifications estimable in money, and includes all forms of entertainment and all forms of employment for reward ; but it does not include the payment of any expenses bona fide incurred at or for the purposes of any election and duly entered in the return of election expenses prescribed by these rules.

#### PART II

##### *Bribery*

3. The receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

- (a) by a person to stand or not to stand as, or to withdraw from being, a candidate ; or
- (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw his candidature.

#### CHAPTER IX A : INDIAN PENAL CODE

171 E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both :

Provided that bribery by treating shall be punished with fine only.

*Explanation* :—‘ Treating ’ means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

# INDIAN ELECTIONS OFFENCES AND INQUIRIES ACT, 1920

## PART II

13. Any person who has been convicted of an offence under Section 171 E or 171 F of the Indian Penal Code or has been disqualified from exercising any electoral right, for a period of not less than five years, on account of malpractices in connexion with an election shall be disqualified for five years from the date of such conviction or disqualification from—

- (a) being appointed to, or acting in, any judicial office ;
- (b) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached ;
- (c) being elected or sitting or voting as a member of any local authority ; or
- (d) being appointed or acting as a trustee of a public trust :

Provided that the Governor-General, in the case of an election to the Council of State or the Legislative Assembly, and the Governor or the Lieutenant-Governor, in the case of an election to his Legislative Council, may exempt any such person from such disqualification.

## *Grounds for Declaring Elections Void*

XLIV.—(1) Save as hereinafter provided, in this rule, if in the opinion of the Commissioners—

- (a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by a corrupt practice, or
- (b) any corrupt practice specified in Part I of Schedule IV has been committed, or
- (c) the result of the election has been materially affected by the improper acceptance or refusal of any nomination, or by the improper reception or refusal of a vote, or the reception of votes which are void or by any non-compliance with the provisions of the Act or the rules or regulations made thereunder, or by any mistake in the use of any form annexed thereto, or
- (d) the election has not been a free one by reason of the large number of cases in which undue influence or bribery, within the meaning either of Part I or of Part II of Schedule IV has been exercised or committed,

the election of the returned candidate shall be void.

- (2) If the Commissioners report that a returned candidate has been

guilty by an agent (other than his election agent) of any corrupt practice specified in Part I of Schedule IV which does not amount to any form of bribery other than treating as hereinafter explained or to the procuring or abetment of personation, and if the Commissioners further report that the candidate has satisfied them that—

- (a) no corrupt practice was committed at such election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent, and
  - (b) such candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at such election, and
  - (c) the corrupt practices mentioned in the said report were of a trivial, unimportant and limited character, and
  - (d) in all other respects the election was free from any corrupt practice on the part of such candidate or any of his agents,
- then the Commissioners may find that the election of such candidate is not void.

*Explanation.*—For the purpose of this sub-rule ‘treating’ means the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object, directly or indirectly, of inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting.

At the outset one fact must be made quite clear. Any allusion to the probability of corruption being committed at elections in India, or to malpractices detected in the past, any reference to the protection of the ignorant or inexperienced voter must not be regarded in the least degree as intended to cast a slur on Indian public morals as compared with those of other countries.

It is indeed because of the low standard of probity elsewhere, because of the evils that prevailed in the United Kingdom that stress is laid on the danger of similar corruption in India. A highly developed system is being transplanted to a country where there has been little or no opportunity for gradual evolution such as has been accompanied in England by the detection and prohibition of malpractices, and by a marked advance in the rectitude of public opinion. In some other countries the restraint imposed by enlightened public opinion does not operate to the same extent. An elector even in a progressive country where democracy is flourishing may regard bribery and corruption as venial. It is the fear of Indian elections being made the occasion of that wholesale debauchery of the electorate that formerly accompanied elections in the ‘pocket boroughs’ of England, it is the intense dislike of ‘Tammany’ rather than any supposed inherently

corrupt tendencies of an Indian voter that points to the need for emphasis on the dangers that await the Indian electorate. There is reason to fear that the enlightenment of the inexperienced electorate in this country might in some places take the form of cash payment, and that a state of affairs might prevail similar to that disclosed in many of the older election petitions reported in England, and that such state of affairs might at this juncture become to be regarded as normal. The stage of development has been omitted ; safety can only be assured by the most rigorous enforcement of such legislation as is considered necessary to obviate the dangers of corruption by careful and thorough preventive action at the outset. Otherwise in the mud of an election there will be much fine gold. This and the following chapters on corrupt practices, therefore, it is hoped, will be regarded solely as a practical plea for honesty.

While it is quite arguable that an incorruptible Government may not be desired by the people and that a corruptible Government elected by the people may at the same time be more popular, and its vicious origin no great bar to progress, few will assert that a Government honestly elected is not likely to be a better Government than one born in dishonesty. With this preliminary disavowal we may now proceed to examine the law relating to the prevention of bribery, and the extent to which the safeguards, found necessary in England, have been introduced into India, whose Penal Code, till Chapter IX A was introduced, contained no definition of bribery, and only recognized that offence in relation to public servants.

In England corrupt practices have been dealt with in special Acts. Thus, for example, 15 & 16 Vict., c. 57 (June 1852) was an Act to provide for more effectual inquiry into the existence of corrupt practices in the election of members to serve in Parliament. Two years later 17 & 18 Vict., c. 102, was passed 'to amend the laws relating to bribery, treating and undue influence'. In 1868 we get the Parliamentary Election Act, while the Ballot Act of 1872 prescribed various penalties for certain offences at elections. The Act from which our Indian procedure has been drawn is known as the 'Corrupt and Illegal Practices Prevention Act of 1883'. This re-enacted the provisions contained in the statutes referred to above with such alterations as appeared necessary. In India corrupt practices are defined (with the exception of treating) in Schedule IV attached to the electoral rules made by the Governor-General in Council with the sanction of the Secretary of State in Council. Certain penalties are provided in the rules themselves, as for example disqualification of the candidate convicted of corrupt practices. Other penalties will be found in Chapter IX A of the Indian Penal Code. 'Treating', an offence which looms very large in English election law, is defined in an explanation to sub-section 2 of rule XLIV. This offence is dealt with in a later chapter. It is interesting to contrast the English and Indian definitions of bribery.



Bribery was first defined in 17 & 18 Vict., c. 102, in four sub-clauses of section 2 and was re-enacted in section 3 of the Act of 1883 as follows :

‘ The following persons shall be deemed guilty of bribery, and shall be punishable accordingly :

1. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election.
2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer promise, or promise to procure or to endeavour to procure, any office, place or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election.
3. Every person who shall directly, or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, pronouncement, or agreement as aforesaid, to or for any person in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election.
4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.
5. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election :

Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expense *bona fide* incurred at or concerning any election.’

The wording of the English definition is wider than that adopted in India. ‘ Every person who shall directly or indirectly by himself or by any other person on his behalf ’ covers, it is submitted, more ground than ‘ A candidate or his agent or any other person with the connivance of a candidate or his agent ’, for ‘ connivance ’ will always be very difficult to prove.

The proviso at the end of the explanation is a saving clause for legal expenses *bona fide* incurred. What these legal expenses are we have

already endeavoured to show when dealing with the duties of an election agent. Generally speaking, they may perhaps be said to include all necessary and reasonable expenditure in the 'conduct of an election or for promoting the interests of a candidate' other than those expressly declared in this Schedule IV of the rules to be illegal.

It is not clear why loans should not be expressly specified in the Indian definition. They were deliberately included in the English law because of cases that occurred at *Lyme Regis* (1842: 2 Power, Rodwell and Dew's Election Cases, 120), and *Rye* (1853: Barron and Austin's Election Cases, 512).

'In the former case the Committee reported "that a corrupt practice had for some years prevailed of lending money upon notes of hand, bills of sale, or other securities, and that a practice so insidiously corrupting and demoralizing deserved serious attention and inquiry on the part of the House". In the latter case the report stated that one S had exercised for many years great influence in the elections at Rye by corruptly lending money for electioneering purposes to the amount of £15,000; and that in many instances the voters were influenced; while those who had voted against S's party, or had forborne to vote, were pressed for repayment.'

Probably a reduction of the rate of interest to a voter would be regarded as falling within the explanation of the term 'gratification'. The Indian definition in fact is a clever and ingenious attempt to boil down the somewhat cumbrous English definition which was based on ascertained roguery. An election agent would hesitate to advise his candidate that the election court would *assume* corrupt intention in the case of any gift, offer, or promise to a voter, but he should warn him to be most careful, lest 'the other party' may be able to cast on him the onus of showing that any generosity, private or public, was not dictated by the 'corrupt' motive of endeavouring to influence a free and honest elector.

Few questions have caused more judicial discussions in England than the various aspects 'bribery' may assume. A few points may be noticed. First it is not necessary that money should pass. An offer or a promise is sufficient, and this may be made 'round the corner' by some one other than the candidate or his agent (not his 'election agent'). Inevitably the door is opened—and the risk must be run—of offers being made ostensibly on behalf of one candidate, actually by some one acting for his rival, with a view to subsequent proceedings. A witness may come to Court and depose that he was offered a bribe by a person whom he had not seen before and whom he might indeed fail to recognize, who left with him a 'chit' entitling him to payment on presentation to that candidate if duly elected, whose election is challenged. How is such chicanery to be defeated? Safety lies—so it has been proved in England—in watching the other man's agents.

The Indian rules provide a further safeguard in insisting on the production of 'particulars', i.e. the date of alleged corrupt practice,

the place, and the parties to the same at the time of presenting the election petition. (See Chapter XVI). This very salutary provision, introduced by the amendments of 1923, should increase the difficulty of bringing any false charge.

The promise of refreshment in the future has been held to be a bribe. The surrender of rights by a landlord such, for example, as giving the tenants rights in timber which had not been definitely entered as their due during the land settlement operations, would, it seems, be bribery following the law as laid down in *Launceston* (1874 : 2, O'M. & H., 131). Here on the eve of an election a candidate gave certain voters the right to trap rabbits. The election was avoided. The amount of the bribe is immaterial, but often the question is one of degree as the fact of the amount being small tends to negative corrupt intent. An isolated gift of a small amount on the occasion of birth or death in the family of the recipient would not necessarily be bribery, though it might be 'charity stimulated by gratitude or hope of favours to come'. An excessive payment in a purchase or for services rendered may be a bribe.

'The word 'corruptly' has been several times under the consideration of the judges, and, as far as I know, they are all agreed upon its meaning; and my brother Blackburn, certainly on two occasions, has laid down the law in reference to it in terms which are exceedingly clear. He said in the *Hereford* case, "what is the exact meaning of the word "corruptly"? (that was upon the 4th section of the Act). it means contrary to the intention of the Act, with a motive or an intention by means of it to produce an effect upon the election, not going so far as bribery, but going so far as to produce an effect upon the election". Now where the motive is a *bona fide* one of giving a privilege to a tenant, where the landlord expects nothing in return, and to exercise no influence upon his tenant's conduct, that question does not arise, but where the motive is to produce an effect upon the election, then I think the offer, if it be an offer within the meaning of the section, made to voters, comes by force of that meaning to be within the definition of the section an offer made, and made to influence by the means I have already pointed out. But then comes the question whether or not this is a valuable consideration. I cannot help thinking it is a consideration which is valuable and appreciable, and that being so, I am bound to come to the conclusion that this was a corrupt act done by the Respondent himself. I cannot go into any intention of the Respondent, I must be governed by what he said and what he did, and by the inferences I ought to draw therefrom.' (*Loc. cit.*, at p. 132.)

### *Presentation of the Petition*

**XXXII.—(1)** An election petition against any returned candidate may be presented to the Governor—

- (a) by any candidate or elector within fourteen days from the date on which the return of the election expenses of the returned candidate and the declarations, referred to in rule XIX, are received by the returning officer; or
- (b) within thirty days from that date by an officer empowered by the local Government in this behalf on the ground that the election

has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed ; or

- (c) on the ground that the returned candidate or his election agent or any other person acting with the connivance of the candidate or of his election agent has been guilty of bribery, undue influence or personation in respect of the election, by any candidate or elector within fourteen days from the date on which such returned candidate, election agent or other person is convicted of an offence under section 171 E or section 171 F of the Indian Penal Code.

The addition of clause (b) by amendment in 1923 is important. Its origin is discussed in the next chapter dealing with undue influence, as there was no report or suspicion of 'general bribery' on such a scale as to 'debauch' any constituency in India during the general election of 1920.

This Amendment follows the Common Law of England.

'With respect to bribery the law is perfectly clear. Bribery at common law, equally as by Act of Parliament, avoided any election at which it occurred. If there were general bribery, no matter from what fund or by what person, and although the sitting member and his agents had nothing to do with it, it would defeat an election, on the ground that it was not a proceeding pure and free as an election ought to be, but that it was corrupted and vitiated by an influence which, coming from no matter what quarter, had defeated it and shown it to be abortive.' Per Willes, J., in *Lichfield* (1869 : 1, O'M. & H., 26).

*General bribery*, said the same learned Judge in *Tamworth* (1869 : 1, O'M. & H., 85),

'unquestionably from whatever quarter it comes, will vitiate an election, even without proving any such connexion, probably because of the propriety of acting upon the presumption that it must have been from some person so interested in the member, or so connected with his agent, that it ought to be attributed to the one or at least to the other.'

In a later case at *Ipswich* (1886) :

'If one saw that bribery was so rife that there could be no fair election held in the place, then I should say that the election would be avoided, subject only to this, that it would be obviously unfair to avoid the election if one found that the bribery which had been committed had not been in favour of the persons who had been elected ; there must be that qualification always, for it would be impossible for a person who had been fairly elected to be unseated merely because his opponents had been largely guilty of bribery.' (Per Mr. Justice Denman : 4, O'M. & H., 71 ; *Beverley* (1, O'M. & H., 147) ; and *Stafford* (1, O'M. & H., 234), referred to.)

In the *Borough of Maidstone* case (1901 : 5, O'M. & H., 153) the total number of proved cases of bribery was twenty-five, extending through

all the wards with suspicious uniformity in the nature of payment, pointing to

'a certain pre-arrangement on the part of some persons, the existence of something like a plan, something more at any rate than a casual or unpremeditated expenditure here and there, of unscrupulous partisans. Still the total number of proved cases is about 25, and we see no evidence which enables us to form a satisfactory opinion as to the proportion of the bribeable class to the rest of this constituency; and so, upon the whole, we do not think we should be justified in reporting that bribery was a practice which extensively prevailed at the election. So far as we are aware, there has never been any judicial pronouncement or suggestion as to what the expression "extensively prevailed" ought to be taken to include, but we cannot but think that the expression was intended by the Legislature to denote something wider and more general than the bribery, even systematized bribery, of a comparatively small class of voters. In the present case there is not sufficient proof before us that the bribeable class greatly exceeds the number of proved cases of bribery.'

In the result the court declared the election void, but held that they were not justified in reporting that bribery had 'extensively prevailed' at the election.

A returning officer therefore who is approached by an unsuccessful candidate with a request that he should move Government, through the recognized channel (the Legal Remembrancer), to file a petition under rule XXXII (1) (b), should scrutinize with care the statement of charges which would have to accompany his report before he decides to advocate relieving the candidate of the expense of an election petition. It is submitted that a local Government should only empower an officer to present an election petition in a case of the kind which would fall within the purview of section 44 (11) (a) of the Corrupt and Illegal Practices Prevention Act, 1883, where the court may order the whole or part of the costs of any inquiry to be paid by the county or borough. He might properly present such a petition when so large a number of cases, regard being paid to the size of the constituency and the area over which bribery is said to have been committed, is reported as would show an attempt to debauch the constituency. In this latter event in the interest of the public morality it would seem to be desirable that Government should conduct what is really a public presentation. The same criterion might apply to any case of alleged general intimidation.

More direct evidence can usually be given of a gift or of its acceptance than of a promise of a gratification. Yet

'where the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself . . . because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence; but one person understands what is said by another differently from what he intends it.' Per Mr. Baron Martin in *Cheltenham* (1869: 1, O'M. & H., 64).

Offers or conversations unaccompanied by any acts should be much more strongly proved in evidence than where some clear definite act has followed the alleged offer or conversation. (*Mallow*, 1870 : 2, O'M. & H., 22.) Bribery committed at a date long antecedent to the election would void the election (*Sligo*, 1880 : 1, O'M. & H., 302 ; see also *Stroud*, 1874 : 2, O'M. & H., 183).

Apart from 'treating' there have as yet been no cases dealing with charges of bribery in India. Judging from the decisions in *Rohtak* (I. E. P., 193) and *East Punjab* (I.E.P., 170), the election court will insist on proof of a corrupt motive.

'The question of intention thus becomes greater, and this is the case also in the English law dealing with corrupt practices at an election.' The English Act 17 & 18 Vict. c. 102, sect. 2, quoted above in two places, uses the word *corruptly*. Bribery is a 'corrupt' practice as distinct from an 'illegal' practice, a distinction recognized in effect in the provisions of Schedule IV as regards penalties incurred, though there is not the difference in title contained in the English Act.

A curious effect of the wording of rule XLIV (1) (b) is noticed in the *Attock* case (I. E. P., 7).

Literally interpreted this might involve the election of a candidate, innocent of any corrupt practice, being declared void, if a corrupt practice had been committed by any third party. The risk, such as it is, may safely be kept to the good sense of an election court of inquiry.

A common form of bribery in England was stopped by section 17 of the Corrupt and Illegal Practices Prevention Act, 1883 :

'No person shall, for the purpose of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for any purposes or capacities mentioned in the first or second parts of the First Schedule to this Act.'

The schedule referred to limits the establishment which an election agent may entertain. Previously the employment of voters for payment at an election with the object of influencing their votes was common. In the absence of any such restriction like that quoted above or of any limit on expenditure it appears quite possible that attempts may be made in India to win votes by 'colourable' employment, i. e. by hiring a large number of persons ostensibly to work for the candidate, actually to vote for him. Hence the words *bona fide* in the proviso. At *Oxford* (1880 : 3, O'M. & H., 155) 744 messengers were employed on one side, of whom about 600 were voters who performed no adequate services or work. The election was avoided. The comparison of the number of voters employed upon election work with the number of the electorate to be polled may be an important consideration in determining whether the employment was colourable.

Though no case of bribery was brought before any election court on petition after the first general election in India in 1920, there were

several charges of treating, and in two cases *Hissar* (1, I. E. P., 107) and *Jaunpur* (1, I. E. P., 131) evidence was produced. In the former case the evidence proved that 'nearly one hundred voters from one village were fed on the polling day at Hansi by the men intimately connected with the Respondent, and acting on his behalf'.

In the latter case the evidence, given in support of a recriminatory charge that a certain person with the connivance of the Petitioner or his agent had bought some sweetmeats from a local Halwai and distributed them to the voters on the election day, was disbelieved.

'Treating' is a form of bribery, and if resorted to on a large scale might, like general bribery, invalidate an election, on a petition filed under rule XXXII (1) (b) by an officer empowered by the local Government on the ground that the election has not been a free election. Such treating need not necessarily be traced to the candidate or agent. If it be proved that there was 'an organized system for debauching the voters' the election would be defeated. (*Drogheda*, 1869: 1, O'M. & H., 257). Treating to be 'general' must produce an effect upon a considerable number of minds (*Hexham*, 1892: 4, O'M. & H., 147), but 'a very small amount is sufficient to procure a great deal of popularity'.

As regards the corrupt intention of the donor this may be inferred either from his actions or those of his agent. Deliberate abstinence on the part of the candidate from requiring an account of expenditure may amount to personal corruption (*loc. cit.*, 151).

'Corruptly' means 'with the object and intention of doing that thing which the statute intended to forbid.' (*North Norfolk*, 1869: 1, O'M. & H., 242.) There must be the intention of obtaining a vote.

'What the legislature means by the word "corruptly" for the purpose of influencing a vote, is this: that whenever a candidate is, either by himself or by his agents, in any way accessory to providing meat, drink, or entertainment for the purpose of being elected, with an intention to produce an effect upon the election, that amounts to corrupt treating. Whenever also the intention is by such means to gain popularity and thereby to affect the election, or if it be that persons are afraid that, if they do not provide entertainment and drink to secure the strong interest of the publicans, and of the persons who like drink whenever they can get it for nothing, they will become unpopular, and they therefore provide it in order to affect the election—when there is an intention in the mind either of the candidate or his agent to produce that effect, then I think that it is corrupt treating. But everything is involved in the question of intention, and it becomes important to see what is the amount of the treating.'

It will be seen that treating is therefore regarded as one form, but a less noxious form, of bribery. The difference is set forth by Lawrence, J., in *Bodmin* (1906: 5, O'M. & H., 231):

'There is a clear distinction between bribery and treating. In cases of bribery there is always something in the nature of a contract—

"If you give me a sovereign I will give you a vote"—or some such understanding, but treating is an entirely different matter. In treating it is not necessary that the person treated should belong to the opposite party, whereas it is of no use to give money to a man who is going to vote for you already; the money must be given to the other side in order to draw another vote. But if you give drink to a man with the intention of confirming his vote and of keeping up the party zeal of those believed to be already supporting your candidate, then that is corrupt treating.'

A short definition of treating was given in *King's Lynn*,<sup>1</sup> 'the corrupt giving of meat, drink or entertainment to persons in order to influence their votes', or in another case more bluntly as, 'getting at the voters through their mouths and through their stomachs'. O'Malley and Hardcastle's six volumes of *Reports of Election Petitions* contain numerous cases of 'treating', and it is probable that this offence may loom as large in judicial decisions in India as in England. Previous to the reform scheme it had, as following English precedent, been made the subject of affidavits in election petitions in India. Thus at an election inquiry held under the Indian Legislative Council (Election Inquiries) Ordinance, 1916, one of the counts in the indictment framed by Mr. A., the petitioner, was that Mr. R., the respondent asked two voters, described as being 'very ordinary shopkeepers', to dine with him. Mr. R. said he only invited his friends and that he had regularly entertained for some years. The Commissioner found that the two invitations had actually issued but were declined, and that only one of the voters actually voted for Mr. R.

To the Indian candidate, with traditions of Eastern hospitality behind him, it may seem a shameful thing that he may not give a glass of sherbet to an elector who has come a long distance through the heat of the day to record his vote. This, however, is only one of the minor discomforts accompanying the adjustment of Eastern ideas to a system evolved from conditions prevailing in the West. It may be said that the privilege of the franchise carries with it certain necessary limitations to hospitality. What these are may best be gathered from some of the reported cases. It must be remembered, however, that the English definition, in the Corrupt and Illegal Practices Prevention Act, section 1, also lays stress on the corrupt intention of either the donor or recipient.

It has been often said that 'One man may steal a horse while another may not even look over the hedge'. Such disparity of treatment is also to be found in the laws regarding elections in England as the following contrast will show.

At a certain constituency in Cornwall some years ago there arrived a stranger who visited the local curiosity shop, and made extensive purchases to the value of over £100. 'I will', he said, 'come back at four o'clock to-morrow afternoon and pay you for these, if you place

<sup>1</sup> 1911: 6, O'M. & H., 179. The whole report should be read.



them all on one side of your shop window with a notice that these goods were all purchased to-day by Mr. H. who is taking delivery at 4 p.m.' At that hour a crowd had collected to see the purchaser, and Mr. H. addressing them said that if he became a resident in that town, he would do the same by every shopkeeper in the town who had good value to offer for money. Then followed the present of a park and the redemption, by paying the capitalized value, of a local tax of no great amount but the collection of which was always resented.

A few months passed and the generous stranger became a candidate for Parliament and was in due course triumphantly elected. Nor was his return contested by petition.

At a neighbouring constituency the son of a peer was to become a candidate. His mother celebrated the auspicious event by lending the grounds for a garden party to which many people were invited without regard to their political opinions. Tea and refreshments on a lavish scale, but no intoxicants, were provided, and political speeches were made by the candidate, his father, and the election agent. It was held that the entertainment was really provided by the agent, though nominally by a political association. The candidate's father paid the bill amounting to £170. The subsequent election was avoided on petition on the ground of 'treating' by the election agent, and the candidate, who had been returned, was unseated.

The offence of treating is not included in the list of corrupt practices given in Schedule IV to the rules for elections. It is to be found in an explanation to rule XLIV. This rule deals with the report of Commissioners appointed by the Governor for an inquiry into an election petition. If they report that a candidate has been guilty by an agent (other than his election agent) 'of any corrupt practice which does not amount to any form of bribery, other than treating as hereinafter explained, or the procuring or abetment of personation', and also that the candidate and his election agent were themselves innocent of and took every precaution to prevent the commission of corrupt practices 'the Commissioners may find that the election of such candidate is not void.' Every one should therefore clearly understand that bribery and personation cannot be condoned at all, even if committed by some one other than the candidate or his election agent, if acting on behalf of the candidate, but that the Commissioners can exonerate a candidate from the consequences of undue influence, treating, false publication and the like under certain conditions.

The fact of being a candidate does not deprive a man of the customary rights of hospitality, but precludes for the time being any marked extension in the number of his guests or the quality of his hospitality. The class of voter he entertains is material: so also is the manner of entertainment. The openness of the act is no excuse: on the other hand, advertisement by entertainment is equally undesirable. A candidate may very properly feed those persons who are assisting

him in the conduct of his election, but expenditure so incurred should be included in his declaration of expenses. It is, however, better to leave all workers, paid or unpaid, to find their own refreshments. It would seem necessary in order to avoid an election to prove that certain voters had been actually influenced. The candidate should refrain from meeting the cost of hospitality ostensibly given by some one else. Thus at *Rochester* (1892 : 4, O'M. & H., 156), a party was given in the name of a political association : refreshments were to be paid for by the purchase of tickets. It was found that the money so collected was totally inadequate to meet the charges. The Court held that the refreshments were supplied in an excessive quantity to influence voters in favour of the Respondent and avoided the election for treating by agents, but acquitted the Respondent of personal treating. It has been held that an entertainment as 'an expression of gratitude' given after the election by a returned candidate is not treating, if it is clearly established that it was not given as the result of any promise or invitation previous to the election. In the *Kidderminster* case (1874 : 2, O'M. & H., 173), however, the candidate had on more than one occasion expressed his intention of public enjoyment when 'free and untrammelled by the election law' and did in fact take steps to spend a large sum of money on such entertainments. The election was avoided.

Apart from the treating of an individual the Courts in England have in the past had before them cases where 'general treating' was alleged. As we said in an earlier chapter, general intimidation may avoid an election. So, too, an organized system of treating on such a scale as 'to debauch the electorate', even if not traceable to the candidate or his election agent, would in England result in the election being void at common law. In India also it would come within rule XLIV (1) (a), if 'the election of a returned candidate has been procured or induced, or the result of an election has been materially affected by a corrupt practice'. The treating may take place 'directly or indirectly', as for example to a member of a voter's family in the hope that the voter may thereby be influenced. Should a candidate wish to give schoolboys sweets he would be wise to defer doing so till after the election, and also should not disclose his intention of so doing. It has been held in *Stroud* (1874 : 2, O'M. & H., 184) that the payment of wages to millhands, though the mill was closed on polling day, was not bribery, whereas it was held in *Hexham* (1892 : 4, O'M. & H., 147) that treating committed more than a year before could avoid the election.

## CHAPTER XII

### UNDUE INFLUENCE

The following shall be deemed to be corrupt practices for the purposes of these rules :

#### PART I

#### *Undue Influence*

2. Any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or of any other person with the connivance of the candidate or his agent with the free exercise of any electoral right.

*Explanation.*—(1) Without prejudice to the generality of the provisions of this clause, any such person as is referred to herein who—

(a) threatens any candidate or voter or any person in whom a candidate or voter is interested, with injury of any kind ; or  
(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter within the meaning of this clause.

(2) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this clause.

#### CHAPTER IX A OF INDIAN PENAL CODE

171 A. (b) 'electoral right' means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

171 C.—(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or  
(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

**171 F.** Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

See also rules V (3), VII (2), and XLIV (1) (b).

The definition in Part I of Schedule IV is that introduced by the amendments to the electoral rules in 1923. Under Part II (1) of the same Schedule the act of undue influence 'when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent' is also a corrupt practice, but it would not under rule XLIV avoid the election on petition, unless there were so many acts of intimidation as to prevent a free election. The election might be avoided by petition under rule XXXII (1) (b) presented 'by an officer empowered by the local Government in his behalf'.

Schedule IV of the electoral rules refers only to elections to the Provincial councils or the Central Legislatures, i.e. legislative bodies constituted under the Government of India Act. The provisions of Chapter IX A of the Indian Penal Code extend to any 'election for the purpose of selecting members of any legislative, municipal, or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election'. We may first glance at the development of the offence of intimidation at elections and at the English law thereon.

In 1275 it was enacted that 'because elections ought to be free, the King commandeth upon great forfeiture, that no great man nor other, by force of arms, nor by menacing, shall disturb any to make free election' (3 Edw. I, c. 5, s. 5). It was also enacted in the Bill of Rights (1, Will. and M., sess. 2, c. 2) 'that election of members of Parliament ought to be free'. The Indian definition of undue influence deals with any interference designed to prevent a person from voting or standing as a candidate. The freedom of the individual may be impaired in various ways by physical coercion, fraud, or threats of injury (including the infliction of either temporal or spiritual injury) whether to the person 'himself or anyone in whom that person is interested'. The first English definition is to be found in 17 & 18 Vict., c. 102, sect. 55, an Act passed in 1854. As a sign of the times it is interesting to record that section 7 of the same Act imposed a penalty of two pounds on any candidate who 'by himself or agent gave any voter any cockade ribbon or other mark of distinction'.

In 1779 the House of Commons resolved 'that it is highly criminal in any Minister or Ministers or other servants of the Crown directly or indirectly to use the powers of office in the election of representatives to serve in Parliament; and an attempt at such influence will at all

times be resented by this House, as aimed at its own honour, dignity, and independency as an infringement of the dearest rights of every subject throughout the Empire, and tending to sap the basis of this free and happy constitution'. Though the Indian definition is silent on this point, it is perhaps desirable to point out that officers of Government cannot be too careful to maintain strict impartiality. They, of course, like any other electors, are at liberty to hold their opinion of the merits of a candidate; but, it is submitted, they should observe the greatest care to see that their personal views may not be given under such circumstances as might invest them with any official authority. Similarly a candidate who endeavoured to obtain the good offices of a public servant would probably find that the Election Commissioners would, following the English Law, condemn any official interference.

The present English definition is to be found in section 2 of the Corrupt and Illegal Practices Prevention Act of 1883:

'Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict, or threaten to inflict by himself, or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.'

The definition refers to individual not general intimidation, though the latter in India, as in England, will, when read with rule XXXII (1) (b), avoid an election. Its difference from earlier definitions lies in recognizing the threat of *spiritual* injury as undue influence. This was also included in the earlier Indian definition in section 2 of Part I of Schedule IV of the rules for elections:

(1) Any direct or indirect interference or attempted interference by a candidate or his agent or any other person with the connivance of the candidate or his agent, by any of the means hereafter specified, of the right of any person to stand or not to stand, or to withdraw from being a candidate or with the free exercise of the franchise of an elector.

(2) The means above alluded to are—

(a) any violence, injury, restraint, or fraud and any threat thereof;

(b) any threat to a person or inducement to a person to believe that he or any person in whom he is interested will become or be rendered an object of divine displeasure or spiritual censure;

but do not include any declaration of public policy or promise of public action.

There appears to be some difference between the two definitions. In England the manner of possible interference is indicated: in India any interference, provided it is active, may amount to undue influence.

In England it was not contemplated that any candidate might wish to withdraw and be restrained from doing so. In India it is thought desirable to refer specifically to such a contingency. Also in India the extent of the influence is regarded as extending to a third party in whom the person threatened is interested.

The introduction of a special procedure to deal with cases of general intimidation, i.e. so large a number of cases of undue influence that the election was not a free election, was probably due to the occurrences at *Lahore* (1, I. E. P., 138).

‘It is further admitted that the campaign of intimidation was directed against all voters, no matter for whom they might have been going to vote, and was organized by a political body known as non-co-operators. Now we are perfectly prepared to find that the evidence tendered by the Petitioner would, if not rebutted by the Respondent, have proved that there was general intimidation on a fairly large scale, but we did not consider it necessary to call upon the Respondent to produce rebutting evidence since, in our opinion, the Petitioner had failed to make out a case for avoidance of the election by the evidence which he placed before us. There are two main factors which have influenced us in coming to this decision. Firstly, the case is rendered peculiar and *sui generis*, so far as we are aware, by the fact that, since the intimidation was directed against both sides equally, it is impossible to say that the Petitioner was affected more than the Respondent: secondly, we are quite unable to ascertain even approximately how many voters actually went to the polling stations for the purpose of voting and were deterred from doing so, and how many never approached the polling stations.

Ordinarily no doubt a considerable percentage of persons on the electoral roll would go to vote, but here we have this complication that the non-co-operation movement, which had been in progress by non-violent methods for many months before the polling day, had already admittedly affected many voters to the extent of inducing them to determine to refrain from voting at all.’

The Commissioners added :

‘There is no precedent for dealing with a case of the kind before us, where, even if it be assumed that the result may have been affected, neither of the parties can be shown to have suffered more than the others.’

The wording of rule XXXII (1) (b) follows the English case law as laid down in *Staleybridge* (1869 : 1, O.M. & H., 72).

‘In order to avoid an election on the ground of undue influence, either it must be shown that the rioting or violence was instigated by the member or his agents for whom he is responsible, or it must be shown that it was to such an extent as to prevent the election being an entirely free election.’

It must be remembered that judgment in the *Lahore* case was delivered before the introduction of clause (b) in rule XXXII (1).

‘Freedom of Election’, said Andrews, J., in *South Meath* (1892 : 4, O.M. & H., 139.) ‘is at common law absolutely essential to the validity of an election. If this freedom be prevented generally the

election is void at common law, and, in my opinion, it matters not by what means the freedom of election may have been destroyed. This is wholly independent of statute law. It would be absurd and unnatural to contend that there could be a valid election which was not a free election. The statute law not only leaves this common law principle intact, but supplements it by stringent enactments, visiting candidates and all others with severe penalties for interfering with the purity of freedom of elections either directly or indirectly.'

See also *Drogheda* (1869 : 1, O'M. & H., 229) and *Dudley* (1874 : 2, O'M. & H., 120), where it was held that the violence, force or intimidation must be such that 'ordinary men, having the ordinary nerve and courage of men are thereby prevented from recording their votes', or as would prevent 'any large number of the electors from voting, because the freedom of election is violated and persons are prevented freely from exercising their franchise'.

Physical violence or rioting on a large scale are not the only grounds for setting aside an election on the ground of general intimidation. Spiritual threats of divine displeasure, widely advertised, would, it is submitted, have precisely the same effect, if these threats were designed to influence voters. Where general bribery, or general undue influence can be proved, it would seem to be unnecessary to prove that the result of the election was materially affected or even might have been affected, though the size of the majority may be a factor in deciding whether the intimidation was general. Speaking generally it is submitted that if the election court is satisfied that the result of the poll is a fair expression of the opinion of the constituency, the election will not be avoided. Freedom of election, however, is not shown by proving that the majority of the electors were able to record their votes. (*Drogheda* quoted above.)

The mere display of physical force may avoid an election as amounting to general intimidation. The presence, for example, of a large body of peons shouting out '... candidate *ki jai*' might invalidate an election. It is the duty, we have seen, of an election agent to see that the law relating to elections is observed in the spirit as well as in the letter; hence he should satisfy himself that any demonstration in support of his candidates is free from the least suggestion of coercion. Thus in *North Louth* (1911)<sup>1</sup> the agent of the respondent was found guilty of undue influence because he canvassed a doubtful voter in the presence of an hostile crowd. Intimidation need not be direct or openly practised. One of the most curious cases on record relates to an election where one of the candidates, himself a man of rigid integrity, received information that certain voters were being assailed with offers of bribes. He could get no direct evidence, but hit on the plan of sending a bogus cipher telegram in which he mentioned *en clair* the names of the individuals under suspicion accompanied by a reference to the police. This was held to be intimidation and the election was avoided. In another case, referred to above, *North Louth* (1911),

<sup>1</sup> 6, O'M. & H., 143.

'two agents of the respondent were found to have sanctioned and connived at lawless proceedings of a mob in attacking individuals and the police, by not interfering when the mob was under their control, and to have been guilty of undue influence on the principle that "*qui non prohibet quod prohibere protest assentire videtur*".'

The election agent, therefore, has himself to draw, and see that all his sub-agents and assistants draw, a very clear distinction between display for the purpose of advertisement or for the encouragement of enthusiasm, and any show of force that may amount to general intimidation. For if English and Irish rulings are followed the *onus* will lie on the agent to show that the actions of his adherents were beyond his control, if they affected or were alleged to have affected the vote of even one individual during the conduct of an election.

From Ireland come the leading cases which decide what is meant by 'the inflicting of spiritual injury' as in the English Act of 1883, or 'the attempted inducement of any person to believe that he or any person in whom he is interested will become or will be rendered the object of divine displeasure or of spiritual censure' as in Schedule IV of the Indian Election Rules. Spiritual intimidation may possibly be made the ground of election petitions in India. Such influence is none the less potent because it is covert. Indeed its very secrecy makes it the more sinister. In *Dublin* (1869) Koegh, J., said, repeating his remarks at *Drogheda* (1, O'M. & H., 255), 'I say above all things that general intimidation and undue influence, whether it is lay or ecclesiastical . . . will upset every election at which it is practised.' In *Galway*<sup>1</sup> in the same year he quoted with approval the electoral argument of Sir Samuel Romilly in the case *Hunguenin v. Baseley*.

'Undue influence will be used if ecclesiastics make use of their power to excite superstitious fears or pious hopes, to inspire, as the objects may be best promoted, despair or confidence' (that is, to inspire despair or confidence in order to attain their own objects be they what they may) 'to alarm the conscience by the horrors of eternal misery, or support the drooping spirit by unfolding the prospect of eternal happiness—that good or evil which is never to end.'

In *Mayo*<sup>2</sup> (1857) it was sworn that a priest made a speech saying that the candidate, whom he was opposing, had sold his country, his body, and his soul, yet he had now the presumption to come and ask for their support. 'But believe me,' he added, 'the curse of God will follow every man that gives it him.' The committee found spiritual intimidation as before; but this time they avoided the election and the priest quoted above was prosecuted for his offence. Lord Fitzgerald in *Longford*<sup>3</sup> (1870) allowed the priest in the proper exercise of his influence on election to 'counsel, advise, recommend and entreat, and point out the true line of moral duty and explain why one candidate should be preferred to another; but he may not appeal to the fears, or terrors,

<sup>1</sup> 1, O'M. & H., 305.

<sup>2</sup> 2, P. R. & D., 258.

<sup>3</sup> 2, O'M. & H., 14.



or superstition of those whom he addresses'. Doubtless as a result of these and similar judgments the definition of undue influence was widened in the Act of 1883 to include the threat of spiritual injury. In 1892 cases were heard from County Meath, north and south, when in an anxiety to combat the influence of Mr. Parnell,

'The Church,' according to O'Brien, J., 'became converted for the time being into a vast political agency, a great moral machine, moving with the resistless influence of united action and a single sway. Every priest who was examined was a canvasser. The canvasser was everywhere on the altar, in the vestry, in the roads, in the houses. The presence of the priest would be a strong moral influence, and a check upon cowards and traitors: but it was an influence, undoubtedly attended with distinct danger to the freedom of the voter.'

It was held by Andrew, J., that the issue of a pastoral by a bishop went far beyond legitimate counsel or exhortation and that the proof that any person was in fact thereby prevented from freely exercising his franchise was unnecessary. The following extract from the bishop's pastoral address shows the nature of the episcopal threat:

'Parnellism is nothing better than heresy in its teaching; it is immoral and condemned by the Irish bishops of the Catholic Church, and I would approach the death-bed of a profligate and drunkard with greater confidence than that of a dying Parnellite. Any woman that sympathises with Parnellism is worse than an abandoned woman.'

The election agent, therefore, should take pains to see that his candidates' election addresses and speeches made by supporters do not in their form or subject-matter, regard being paid to the position of the speaker, contain anything that may be interpreted into a threat of spiritual injury or caste excommunication. If he accepts the assistance of a leading Brahman or a leading landlord and they canvass or make public speeches on his behalf he cannot do better than impress upon them the words of Mr. Justice O'Brien.

'The priest's true influence ought to be like a landlord's true influence, springing from the same sources, mutual respect and regard, sympathy for troubles or losses, sound advice, generous assistance, and kind remonstrance. And where these exist a priest can exercise his just influence without denunciation and the landlord can use his just influence without threat or violence.'

In the *Lahore* case (1, I. E. P., 137) the Commissioners stated:

'At the same time we think that candidates should exercise great caution in invoking the aid of spiritual leaders to assist their candidature, and that spiritual leaders themselves, before addressing their followers, should weigh very carefully the effect which their words would have upon each and every section of such followers.'<sup>1</sup>

In three Indian cases attempts were made to prove general spiritual intimidation. To one reference has already been made, the *Lahore*

<sup>1</sup> See also the advice given on p. 43 *supra*.

case. The others are *Bhagalpur* (I. E. P., 55) and *Darbhanga* (loc. cit., 95). Evidence was given (which was disbelieved by the court) to support an allegation that the Respondent was giving himself out as Mr. Ghandi's nominee.

'The witnesses assert that the purport of Swami Vidyanand's speeches was as follows: You know that I am a *chela* of Mr. Ghandi. The Respondent is standing under Mr. Gandhi's orders and on the tenants' behalf. If you give your votes to him it will be for your benefit: if not, you will commit a sin and incur Mr. Gandhi's displeasure and his curse.'

In the first case (*Bhagalpur*) the Commissioners regarded the petition 'as an impudent and mendacious attempt to defeat the free choice of the electors': in the second they held the evidence to be 'a mere tissue of fabrication'.

We may now examine personal as distinct from general intimidation. If it be proved that the candidate or his agent (not 'election agent'), or any person with the connivance of the candidate or election agent, has interfered or attempted to interfere with the free exercise by any other person of his electoral right the election of any returned candidate *shall* under rule XLIV (1) (b) be void. Note the mandatory wording of this rule. If a candidate were to be prevented by violence from canvassing his constituency and presenting his views and claims for consideration, this might be held to be general intimidation i.e. that the election was not free, but it is doubtful whether it would be an interference with 'the electoral right' of the candidate, unless the election court accepted the position that 'standing' as a candidate includes the right of free access to all the electors in his constituency. Doubtless such a case will come up for decision in due course.

In the 24-*Parganas* case (I. E. P., 233, 234) allegations were made of definite threats by canvassers, on behalf of an influential candidate.

It has been said by Willes, J., in *Lichfield* (1861):

'The law cannot strike at the existence of influence. The law can no more take away from a man, who has property, or who can give employment, the insensible but powerful influence he has over those whom he can benefit by the proper use of his wealth, than the law could take away his honesty, his good feeling, his courage, his good looks, or any other qualities which give a man influence over his fellows. It is the abuse of influence with which alone law can deal. Influence cannot be said to be abused because it exists and operates. It is only abused in cases of this kind, where an inducement is held out by a promise . . . to induce voters to vote or not to vote at an election.'

The large landowner, the commercial magnate, or the successful lawyer must inevitably be men of 'influence'. It is only if they exercise that influence 'corruptly' so that something is done or prevented which the law desires should not or should be done that they are guilty of a corrupt practice. Just as it is not wrong for an influential

man to endeavour 'to procure any office, place or employment' for a person, unless it be done with the intention to obtain that person's vote at an election, so a threat to deprive a person of his employment only becomes a corrupt practice if the intimidation is intended to interfere with the free exercise of the franchise of an elector. There have been many cases of 'wrongful dismissal' before the Courts in England.

The need for care is obvious. The person addressed need not actually be frightened : the threat may fail in its effect on him, but if proved to have been 'a serious and deliberate threat meant to affect the vote', made with the connivance of the candidate, it may lose the latter his seat.

The present law in England appears to be that a candidate or one of his supporters may withdraw his custom from a person on the ground of his political views, provided such withdrawal is not sufficiently serious to affect the saleable value of the good-will of the business. In other words the degree of possible injury has to be estimated. But such action is regarded as most improper. Thus per Bramwell, B., *North Durham* (1874) :

'Now the intimidation that existed at these places was of two kinds, one more venial than the other. The more venial kind was the intimidation which consisted in threatening voters that they should lose custom if they did not vote in uniformity with the wishes of their customers.'

He quoted Willes, J., as saying :

'Where friendly relations have subsisted between two people, and the customer is satisfied with the tradesman and the tradesman with the customer, that they should quarrel and fall out and part company because they do not hold the same political opinions is highly to be deprecated.'

The sudden demand for the immediate payment of an account, for which credit has usually been allowed, has been held to amount to undue influence.

There possibly may be difficult cases in India where the relation of landlord and tenant is concerned. Just as a landlord who, being a candidate, allowed his claims against certain voters for rent to be time-barred would render himself liable to defend a petition on the ground of bribery, so in certain circumstances the institution of rent suits, especially if such institutions were shown to be the result of discrimination, might impugn his election on the ground of undue influence. Because he is a candidate he does not forfeit his rights as landlord. He can still evict a tenant : but if such eviction is designed to interfere with the free exercise of the tenant to vote or refrain from voting it would amount to undue influence.

The following decisions taken from Parker's *Election Agent* may be of interest as showing the influence that may or may not be exercised by landlords and employers :

A landlord has a right to choose as a tenant one who agrees with him in politics to one who does not. But to let a house on the condition that the tenant shall vote as the landlord dictates may be undue influence. The mere fact of tenants who were in arrears with their rent voting in the way their landlord wishes is not alone, in the absence of an understanding, evidence of undue influence. Evidence of threats of eviction would be necessary. The withdrawal of a notice to quit is not corrupt if the real and main motive for doing so is innocent, even though it is done with the knowledge that it might influence votes.

The mere employment of a voter who has voted for the employer's candidate is not undue influence unless a previous promise be proved, but a threat to turn out men who did not vote for a certain candidate is.

The gist of the matter is that the election agent should be careful to see that there are, at the time of an election, no law suits, no rent suits, no dismissals which affect an elector and which might point to any connexion with the latter's right to a vote.

It is an irritating thing for a landlord to see his tenant canvassing against him, but it is still more irritating for him to lose his seat because of any threat he or his agents may have used regarding the tenant.

The fact that a landlord is bound by his position to have a certain amount of legitimate influence was also recognized in the *Galway* case. Mr. Justice Keogh said

'I say it would be a sorry day for this country (and for none more than for the tenant class themselves) if landlords, noblemen, or gentlemen were entirely shut off from the exercise of that legitimate influence which a landlord has a right to use'. (2, O'M. & H., 55).

In the *Galway Town* case (1869 : 1, O'M. & H., 306) the same learned judge made the following remarks :

'The landlord has his vote, and his tenants have their votes, and is it to be said that the landlord is to use no influence with his tenants ? I deny the proposition altogether. I say that it is right and becoming that a landlord should use his influence with his tenants, and so long as he does not exercise that influence in an illegitimate manner, no steadier or safer or more legitimate influence can be used.'

As regards public meetings and disorder by interruptions considerable latitude has been allowed in England, it being thought that to prevent a candidate from speaking will not necessarily prevent a man from voting.

Under 5 & 6 Will. IV, c. 36 (1835), 'where the proceedings at any election shall be interrupted or obstructed by any riot or open violence' the Sheriff or other returning officer may adjourn the proceedings until such interruption or obstruction shall have ceased. The regulations issued by Local Governments impose on the presiding officers at polling stations the duty of preserving order. It is conceivable that this might involve the closing of the poll. To judge from the experiences of several candidates at India's first general election a statute on lines somewhat similar to 8 Edw. VII is needed in India.<sup>1</sup>

<sup>1</sup> See p. 92 *supra*.

## CHAPTER XIII

### PERSONATION

#### SCHEDULE IV : PART I

##### *Personation*

3. The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person who has voted once at an election, for a voting paper in his own name at the same election.

#### PART II

##### *Personation*

2. The application by a person at an election for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or for a voting paper in his own name after he has already voted at such election.

#### CHAPTER IX A : INDIAN PENAL CODE

171 D. Whoever at an election applies for a voting paper or votes in the name of any person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

171 F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

See also rules V (3), VII (2) and XLIV (1) (b).

The English definition of personation runs thus :

‘ A person shall be deemed to be guilty of the offence of personation who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name ’ (Ballot Act, section 24 ; re-enacted by section 3 of the Corrupt and Illegal Practices Prevention Act 1883.)

Section 3 of that Act states :

‘ The expression “ corrupt practice ” as used in this act means any of the following offences ; namely, treating and undue influence, as

defined by this Act, and bribery, and personation, as defined by the enactment set forth in Part III of the third schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation, and every offence which is a corrupt practice within the meaning of this Act shall be a corrupt practice within the meaning of the Parliamentary Election Act, 1868.'

As in India this offence is also a corrupt practice, the disqualification prescribed by rule V (3) applies, as also that given in section 13 of Part II of the Indian Elections Offences and Inquiries Act, 1920 (quoted at commencement of Chapter XI).

Personation in India therefore as regards the penalty ranks level with bribery and undue influence. There is this difference that general personation, unconnected with the candidate, does not like general bribery or general undue influence invalidate the election.

'It has been said, and evidence has been given on that basis, that if the personation was general in its nature, it might unseat the member, irrespective of any agency at all. With that view we admitted some evidence in the early part of the case, but it is now perfectly apparent that nothing of the kind can be maintained. It would be impossible, even if such were the law, that 13 cases of personation out of a constituency of over 8,000, and where there were upwards of 3,500 who voted for the successful candidate, could be said to so infect the whole constituency as to make the election void at Common Law. But I find no authority that the election would be void at Common Law in such a case as this. I do find one of the judges laying down that an election may be void at Common Law when it is proved that the act of personation was committed with the assent of the member or his agent and that there was no necessity to rely upon the statute. I think that leaves the case where it was before, and narrows it to the question of agency. I can very well conceive charges of bribery being made: I can conceive a rich man coming into a constituency, or a man supplied with money by other persons, and bribing in such a way a number of people as to lead the mind of the Judges to the conclusion that the influence of his money, the hope of one person getting it and the fear of another person missing it, may have such an effect upon the mind of the constituency as to debauch it, and make it impossible that a pure election could be held. I can imagine a case of undue influence, whether it be spiritual influence (as it has been called sometimes) or temporal influence. I can conceive cases of that description placing the constituency in such fear, or exciting such hopes, or raising such apprehensions, or working in such a way upon the vivid imagination of a population as to make it an impure election if it is proved that such an idea was widely spread; but I cannot conceive such a thing in the case of personation, because if a dozen people successfully personated a dozen people, the next dozen that came up might have nothing to do with it at all. It is not a complaint that is either contagious or infectious, except so far as the person gets the complaint, and when he gets the complaint the marks and tokens of it are visible upon him by his doing and committing the direct offence.' (*Belfast*: 1886: 4, O'M. & H., 108).

There are two corrupt practices which under the English law are punishable with the very severe sentence of two years' imprisonment

with hard labour. One is a knowingly false statement by a candidate or election agent as to election expenses. The other is the offence of personation or of 'aiding, abetting, counselling or procuring the commission of that offence'. Personation by an individual will not like an isolated case of bribery or general intimidation avoid an election. The vote wrongfully obtained is struck off. But if it is proved that this corrupt practice is committed by an agent of the candidate,

'not only will the agent be guilty of a felony but it shall also vacate the election, and forfeit the seat. Of course, this is a very severe penalty on the sitting member, and though in a great many cases I have felt that for a small error on the part of the agent it was rather hard that the sitting member should lose his seat, yet I do think that where he has employed an agent who is capable of doing such a thing as persuading another to fraudulently personate and obtain a vote, knowing he was not entitled to it, he properly enough suffers the penalty of having trusted such a person with the management of his election.'

Per Blackburn, J., in *Gloucester* (1873 : 2, O'M. & H., 64). The definition given in the Indian rules is practically the same as that given in section 24 of the Ballot Act, 1872. The Indian rules distinguish between 'the procuring or abetting or attempting to procure by the candidate or his agent or by any other person with the connivance of the candidate and his agent' of an application, and the application for a ballot paper by a person without the knowledge or connivance of the candidate or agent. The penalty in the former case is much more serious. The election 'shall be void': and the offender cannot be nominated as a candidate for five years from the date of conviction, or vote at an election. This disenfranchisement is, of course, in addition to any sentence passed under Chapter IX A of the Indian Penal Code.

Personation is 'the application by a person at an election for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or for a voting paper in his own name after he has already voted at such election'. It is to be noticed that the offence is complete when the person applies for a ballot paper. There is reason to believe that partly owing to careless preparation of the electoral rolls in municipalities this corrupt practice has been fairly common in municipal elections in India. It can only be defeated by a careful and accurate system of registration accompanied by real vigilance on the part of the election agents, *not* of the presiding officer or his polling officers at the time of ballot. These officers cannot effectively prevent, much less detect, personation. The description of the elector in the electoral roll should be accurate and contain details sufficient for purposes of identification. The preparation of the electoral register is left to regulations to be made by the various Local Governments, as also is the publication and revision of the same. It is one of the primary duties of an election agent to see that the electors whose names have been enrolled are identifiable, and have been correctly entered.

Regulations are also made by the Local Governments for 'the checking of voters by reference to the electoral roll' and these will be found in the instructions issued to presiding officers. Speaking generally it must be left to the polling agents of the candidates concerned to detect or challenge any wrongful application for a ballot paper. This follows section 86 of the Parliamentary Registration Act, 1843.

'If at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the Returning Officer, or his respective deputy, presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then and in every such case it shall be lawful for the said Returning Officer, or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody.'

In England (but not in India), it is the duty of the Returning Officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is Returning Officer and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, must be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony. An election agent or polling agent (i. e., the representatives of the candidate at each polling station), should be careful not to make a reckless charge of personation or they may render themselves personally liable. Three questions, and three questions only, may be put to the voter challenged by the officer presiding at the polling station or his clerk in order to prevent or detect personation. First, 'Are you the same person whose name appears on the register?' Secondly, 'Have you already voted either here or elsewhere for this constituency?' Thirdly, 'Have you voted in any other general constituency for an election to the Legislative <sup>Council</sup> - ?' This third

question is only necessary in a general election to defeat any infraction of rule X (1) proviso. If the elector does not answer the first question in the affirmative and the others in the negative, he should be refused a ballot paper.

The regulations made by local Governments under rule XV (4) & (5) 'for the appointment of officers to preside at polling stations and for the duties of such officers: and for the checking of voters by reference to the electoral roll', perhaps inevitably, at a first election, made it in effect the principal duty of a presiding officer and his assistant 'polling officers' to prevent and detect personation. Thus in the Punjab there



was an elaborate system of identity vouchers : in the United Provinces and in Bihar and Orissa identifiers were to be present. The latter province contained a regulation 22 (1) to the effect that

‘ each elector shall be identified by a member of the panchayat of the circle in which he resides, or by a *dafadar* or by a *chaukidar*, or by some other person, to the satisfaction of the presiding officer.’

If this procedure had been scrupulously followed, it would have effectually limited the ballot to the first 200 or 300 applicants for ballot papers. There would have been no time to deal with others. In the Central Provinces also there was a preliminary investigation, while in other provinces the elector had to sign or make a thumb impression either on a voter's list or on the counterfoil of the ballot paper. The value for any purpose of effective identification of a thumb impression taken in the stress and hurry of a poll would have been small, but it was hoped that the knowledge that this ordeal of identification was a preliminary to recognition as a voter would deter people from personation.

The real fact seems to have been this. Municipal elections in the past had provoked little or no enthusiasm. There had been no organization, no concerted effort to educate the elector. The candidate was content to catch whom he could to vote, including unqualified persons, and hence, it was feared, a not inconsiderable percentage of those applying for ballot papers as being electors to the new legislature might be personators. That this fear had some foundation is shown by the report of the Commissioners in the *Punjab, S. E. Towns* case (I. E. P., 166 to 174) where a municipal overseer canvassing on behalf of the Respondent, allowed his son, who was admittedly not qualified as an elector, to vote. The Commissioners found on scrutiny of the ballot papers that fifteen votes were lost to the Respondent on account of personation. In *Jaunpur* (I. E. P., 120) two polling agents were held to have abetted personation. In the 24 *Parganas* case (I. E. P., 235) similar charges were made, but not proved. To invalidate the election it is necessary to prove, either that the candidate or his *agent* (not be it noted ‘election agent’) or some other person ‘with the connivance of the candidate or his agent’ had procured or abetted the personation, or that the personation, being unconnected with the candidate, had ‘materially’ affected the result of the election. Now the principle involved should be quite clear. It is the duty of the candidate (presumably through a polling agent, since he cannot himself be in thirty or forty polling stations at the same time) to take steps to prevent personation, and to expose all such attempts, and where he cannot detect the offender to make a note of any suspicious elector with a view to subsequent inquiries in order to have any improper votes struck off on a scrutiny. We have seen in dealing with the duties of a presiding officer that the electoral register is conclusive, and that he cannot question the correctness of an entry. We have discussed the

only grounds on which a ballot paper can be withheld, if the elector answers in the manner prescribed the questions which, under the regulation, may be put to the person applying for a ballot paper. Beyond a summary inquiry in cases where, either on his own cognizance or on the assurance of the polling agent, the presiding officer suspects personation, he can do nothing more. His inquiry may or may not result in the collection of evidence to support a prosecution under section 171 F of Chapter IX A of the Indian Penal Code. Necessarily it can only be made in exceptional cases, and for the real detection and exposure of the corrupt practice of personation we must in India, as in England, look to the candidate. The latter would doubtless rather base his election petition on the grounds of failure by the presiding officer to comply with all the formalities and the tedious (and, it may be added, useless) procedure laid down in 1920. Recent amendments to the regulations have recognized the futility of these prophylactic measures: and the candidate who wishes to see that his opponent gets no votes from unregistered persons must take active steps on his behalf and not leave it to an election official. He need not, however, direct his energies to initiating prosecutions. Personation, sufficient to avoid the vote, may nevertheless be innocent. Many a son comes to vote for his father because the latter is dead or infirm, believing he is thereby performing a filial duty. He is in fact devoid of any corrupt intention. 'It is thoroughly understood election law' said Denman J. in *Stepney* (1886: 4, O'M. & H., 46)

'that, unless there be corruption, and a bad mind and intention in personating, it is not an offence. If it is done under an honest belief that the man is properly there for the purpose of voting, it is held in these cases and in other cases analogous that no offence has been committed. Now on the general principle that personation is a corrupt practice, and is only a bad act against the election law if it is corrupt, it seems to me that we ought to decide here that the first vote is a good vote. The second vote I agree would have to come off, but that is not before us in any way, as it was given in another division. Now that this must be the intention of the Legislature, as far as we can gather it is I think, perfectly clear from the several enactments which relate to personation. They are enactments which can be really only applicable to an intentionally bad act, because if a man is guilty at all he is guilty of felony, and may be imprisoned as a felon for a considerable time. To suppose that the Legislature ever intended to enact that a man, who with perfect honesty, but from a mere blunder as to his rights, gives a vote, and then (believing that he has a right to do so), gives a second vote, he being on the register, on the same day, is to be deemed guilty of felony, is to impute an intention to the Legislature which is absurd, though, if it had said so in absolutely plain words, we must have carried it out. I do not think that that is the intention of the Act: I think there is still to be added to the offence of personation a corrupt intention, and, where the corrupt intention is absent, the offence of personation cannot have been committed.'

Supposing a man's name has been wrongfully given in the register and

that he knows that he has been so wrongly described as, for example, 'Ahmad Aziz' instead of 'Abdul Aziz,' he can nevertheless affirm that he is the man whom the name as entered was intended to designate, whereas any one else, though actually possessing the name entered in the register who answered the first question in the affirmative, would be guilty of personation. The presiding officer will be wise to see that the polling agent accepts full responsibility for any challenge on the grounds of personation. If the person challenged answers the questions satisfactorily his vote should be accepted. In the absence of any such reliable evidence as would justify the prosecution of the personator, it would be unwise for the presiding officer to refuse to accept the vote, and he will content himself with noting the fact that the vote has been challenged, and, he may, should such challenge arouse his suspicions, hold a summary inquiry, but he will be wise to leave the validity of the vote to be decided by an election court. The electoral roll is conclusive and final, but the presiding officer may by a short inquiry take steps to satisfy himself as to the identity of the voter with any entry in the roll. He may not question the correctness of any such entry i. e. the right of the elector to have his name entered. This doctrine of honest application owing to misdescription in the electoral register has its limits. It does not admit of a person applying for a ballot paper in a name which he knows is not his own, or which is obviously fictitious, as, for example, where a man called Ahmad Wani obtained a ballot paper in respect of an entry no. 377 on the electoral roll, carrying the name of Hato, 'a mere form of address among Kashmiri coolies.' (*Punjab, S. E. Towns*, 1, I. E. P., 169).

The well intentioned 'fetcher-up', i. e. a person deputed by a sub-agent to see that a certain elector, whose vote is promised to his side, attends the poll (see page 93) finds the elector absent, but his brother anxious to oblige in return for a joy ride in a motor-car. Let him remember the words of Blackburn J., in *Gloucester*, quoted at the commencement of this chapter. From these same words the clever polling agent may derive encouragement. He will appreciate the advantage, if he knows that an agent of the opposing candidate has secured this improper vote, of entering his protest, when, but *not until*, the person has applied for a ballot paper, ask that the questions be put, and then by subsequent inquiries establish a case of abetment of personation by an agent of the candidate. As was stated in Chapter III (page 20), it is not the duty of the polling agent to question the discretion of a presiding officer as to the acceptance or refusal of a vote. He should reserve this for the proper time and place—a scrutiny ordered on an election petition, giving particulars from which the Respondent cannot escape.

## CHAPTER XIV

### THE PUBLICATION OF FALSE STATEMENTS

#### SCHEDULE IV : PART I

##### *Publication of False Statements*

4. The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, which statement is reasonably calculated to prejudice the prospects of such candidate's election.

#### CHAPTER IX A : INDIAN PENAL CODE

171 G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

The words ' the prospects of ' were added by an amendment in 1923. It will be noticed that :

- (1) there must be a statement of fact as opposed to an expression of opinion,
- (2) such statement must be false,
- (3) it must relate to the personal character or conduct of the candidate and
- (4) it must be reasonably calculated to prejudice the prospects of such candidate's election.

' Publication ' will presumably carry the meaning usually attached to the word in libel suits. In an election petition on this count, however, there is no need to prove malice, and it should be remembered that the mere repetition of facts taken from a newspaper or the report of another speech becomes publication by the person repeating.

' There is one other thing which I am very clear upon, and that is this : that if you quote an article from another paper, you make any absolute facts stated in that article a part of your own statement.' (*Sunderland* : 5, O'M. & H., 63).

We may note the use of the word *agent*, not election agent, and remember how very wide the doctrine of agency is in election law. An unwise speech by a careless enthusiastic supporter may, if the latter is recognized as an ' agent ' of the candidate lose his principal his seat. It would probably be held to amount to ' connivance ' if the candidate,

on learning of the publication, and not being in a position to establish the truth of the facts published, took no steps to withdraw publication, or to repudiate the statements made. And to be effective any such repudiation, it is submitted, should be immediate and thorough, the withdrawal of any statement being at least as widely published as the original slander.

The English law is contained in 58 & 59 Vict., c. 40, the Corrupt and Illegal Practices Prevention Act of 1895, amending the earlier Act of 1883. Section 1 deals with 'a false statement of fact in relation to the personal character or conduct of a candidate'. Section 2 runs :

'No person shall be deemed to be guilty of such illegal practice if he can show that he had reasonable grounds for believing, and did believe, that statement made by him to be true.'

Section 3 provides for the issue of an injunction on *prima facie* proof of the falsity of the statement. Section 4 exonerates the candidate unless it can be shown that he or his agent 'has authorized, consented to, or paid for the circulation of the false statement'. Hence an election agent who paid for the printing of an election address that contained a statement of the kind mentioned might discover that his omission to expurgate the address had lost his candidate his seat.

The statement must relate to the personal character of the candidate. Thus in Australia, where elections are conducted on thoroughly democratic lines, with no weakness as to people's feelings derived from an earlier tradition of pleasant manners, the description of a candidate's policy as being one of 'swallow and puke' was regarded as a *bon mot*.

The wise election agent will make himself familiar with those passages in *Odgers on the Law of Libel* which deal with public speeches. He will also remember that apart from slander of an individual a speaker must not use seditious words which tend to bring into hatred or contempt the sovereign, the constitution of the realm, or the Houses of Parliament, or to attempt the alteration of any matter in church or state as by law established, otherwise than by lawful means (60 Geo. III and 1 Geo. IV, c. 8, s. 1, quoted by Parker, p. 190).

For the present, pending judicial exposition in India, the election agent should advise his client to err on the side of caution. Unless he is in a position to show that he had good reason, such as would convince a man of ordinary common sense, to believe the truth of the statement he proposes to make, such statement had better be left unsaid. The political address or the public career or speeches of his rival are fair subjects for bona fide discussion, and unfavourable comments are privileged. He should not, however, allude to the private life or circumstances of any candidate. He should always bear in mind the distinction between criticism and allegation of fact.

'It was one thing (*Davis v. Shepstone* 11, Appeal Cases, 187) to comment upon or criticise even with severity the acknowledged or proved

acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct.'

As summarized in Parker's *Election Agent and Returning Officer* there is no especial privilege attached to speeches made during an election.

'A speaker has full freedom of speech on matters of public interest and general concern. He may express his honest opinion, however adverse, of the policy or public conduct of any public man, and his comments if uttered fairly, with an honest purpose and not maliciously, are not actionable, even though they may affect the reputation of individuals.' . . . 'The mere fact that his opponent is also a candidate for election to Parliament does not give the speaker a right to discuss all his private life and history.'

It was found in the increasing keenness of political contests that rumours were spread or definite statements published which could not be refuted or contradicted in the stress of an election, until the mischief was complete and the damage beyond repair. That the English Act was not passed before its necessity had been established may be inferred from the two important cases tried during the next year. In *St. George's* (1896 : 5. O'M. & H., 104), in the recriminatory case it was proved that on 27 June 1895 the Petitioner had issued 5,000 copies of a leaflet known as the 'St. George and the Dragon pamphlet', in which he charged the Respondent with bribery, cowardice, and lying.

Mr Justice Bruce said :

'There is no doubt that the pamphlet in question is within the mischief of the Act of Parliament. The printing and circulating of a document stating that the candidate has been guilty of lying, cowardice, and bribery, pointing at the same time to specific statements, which are alleged to be the lies of which he has been guilty, and suggesting circumstances which showed that, although he was himself the source of lies, he did not dare to promulgate the lies in his own name, but used as his instrument a man who was his lodger, is to my mind the publishing of false statements of fact in relation to the personal character or conduct of the candidate ; and if such statements are false, they clearly fall within the Act. In my opinion the pamphlet in question is just the kind of print the publication of which the Legislature intended to visit with severe penalties.' (5, O'M. & H., 106).

As however publication was made before the Act came into force, the court did not find, on this count, against the Petitioner. In the *Sunderland* case (1896 : 5. O'M. & H., 62) the Respondent's election agent had distributed literature attacking the other candidate as paying his labourers nine shillings a week, and skilled workmen only 3s. 8d. per day of twelve hours.

Mr. Baron Pollock said :

'Any false statement, whether charging dishonesty or merely bringing a man into contempt, if it affects, or is calculated to affect, the election, comes within this Act. I would give two illustrations that have occurred to my mind as showing the meaning of this. Some perfectly innocent acts may be done by people, and yet they may come,

if they are stated to be done in this way, within the Act. Supposing any gentleman in a county constituency was to say of his adversary that he had shot a fox, and he said it for the purpose of working upon the minds of the constituency during an election, that would certainly come within the meaning of the Act. Again, if any person in a constituency, where one of the members was a temperance man, were to say that he had seen him drinking a glass of sherry—a perfectly innocent act—that would also bring him within the Act. Therefore there is no doubt or difficulty about that part of the question. A greater difficulty, no doubt, does arise when you come to consider what is a statement of fact, and here I utterly decline to give anything like a definition, because it is obvious that an adjective, or even an adverb, may carry with it such a sting as to be a statement of some one particular fact; but when you come to consider what is meant by a fact, a great many considerations arise before the Court, when they come to consider the particular language used, can decide what is a false statement of fact. In the first place, it is obvious to everybody that a mere argumentative statement of the conduct of a public man, although it may be in respect to his private life, is not always, and in many cases certainly would not be, a false statement of fact. In the present case, if one were not to look beyond the present words I should say, speaking for myself, that I should consider very carefully before I held that such words as a man paying “wretched wages”, a man having “clearly shelved”, or being “forced to do” a particular thing, or having sheltered himself under a “Radical shuffle”, were facts which would bring the person who used them within the Act; but I certainly should not let the man who used those words go scot free unless I had carefully considered all the surrounding circumstances, such as who used them, to whom he used them, the meaning they were supposed to bear, and all the other circumstances of the case.’ (5, O’M. & H., 62, 63).

In *North Louth* (1911 : 6, O’M. & H., 162) the returned member was unseated because *inter alia* his election agent had in various leaflets described the opposing candidate (Petitioner) as a ‘place-hunter’ ‘pap-fed with British gold’.

‘It is hard,’ said Gibson J. ‘to read the letter, excused possibly to some extent by strong personal resentment, without attributing to it a personal imputation.’ . . . ‘So construed the documents contained false statements of fact in relation to the personal character and conduct of Mr. H., his honour, rectitude, patriotism. The imputation on him is not on his political action but on his dishonourably and unworthily obtaining Government posts for his relations under cover and by virtue of his seat in Parliament or otherwise.

To say of an ordinary barrister that he is a place-hunter may be only an unkind way of saying that he is ambitious and seeks to achieve as soon as may be the prizes of his profession. The remark applied to any one on the Irish Benches would be a cruel offence. A politician for his public conduct may be criticised, held up to obloquy : for that the statute gives no redress ; but when the man beneath the politician has his honour, veracity, and purity assailed, he is entitled to demand that his constituents shall not be poisoned against him by false statements containing such unfounded imputations.’

In *Cockermouth* (1901 : 5, O’M. & H., 159) it was proved that at an

election campaign during the Boer War the Respondent had paid for pasting placards stating that the petitioner voted against sending men, money, and supplies at a time when the enemy was besieging British towns and wrecking British houses. Per Darling J. :

‘ It is not an offence to say something which may be severe about another person, nor which may be unjustifiable, nor which may be derogatory, unless it amounts to a false statement of fact in relation to the personal character or conduct of such candidate ; and I think the Act says that there is a great distinction to be drawn between a false statement of fact, which affects the personal character or conduct of the candidate, and a false statement of fact which deals with the political position or reputation or action of the candidate. If that were not kept in mind this statute would simply have prohibited at election times all sorts of criticism which was not strictly true, relating to the political behaviour and opinions of the candidate. That is why it carefully provides that the false statement, in order to be an illegal practice, must relate to the personal character and personal conduct. One can easily imagine this kind of thing. To say of a person that he was a fraudulent bankrupt, it would be necessary, probably, to give examples ; but that sort of thing would, undoubtedly, be within this statute.’

Another statement complained of was that ‘ There is not a greater fool in the House than Mr. A. When he got up for a speech most of the members went out’. The learned Judge found that this and other violent things that were said :

‘ are, for the reasons which I have given, criticisms, violent, ill-mannered criticisms if you will, but still criticisms of the political conduct of the candidate, and not really such false statements about his personal character or personal conduct as to amount to an offence under this statute which I have already referred to.’

In *Monmouth* (1901 : 5, O’M. & H., 172) the election was declared void because the Respondent and the editor of a local paper published charges against the opposing candidate asserting that he ‘ depended for an income upon sweating cheap foreigners,’ ‘ dealt in paper made by starving Italians who were paid 9d. a day.’ The fact that the opposing candidate had provoked these attacks by way of retaliation for statements made by his supporters was held to be no defence or excuse.

‘ The fact that he or his supporters may have acted wrongly or unwisely in their attacks, is no sort of protection or answer in the view of the law under this section for the person who has been (as we think Dr. H. has been in this case) guilty of publishing these statements, within the meaning of the section which I have read, derogatory to the character or conduct of his opponent ; not being, in our opinion, protected by having any reasonable ground for believing them to be true. Taken altogether, it appears to me to be quite clear, upon the whole, that we must come to the conclusion to which we do come ; namely, that this section has been violated by Dr. H. Something has been said, of course, as to the language of Mr. A. and his supporters upon this coolie question and South African matters, and the management



of certain portions of some companies who have works or domains there. Those matters would have been properly enough considered by a jury, had there been an action of libel or an action of slander, and would unquestionably, if proved to have been wanton or unmerited, or grossly exaggerated, have diminished very greatly the damages to which the person libelled would be entitled ; but those considerations can have no place with us (they are irrelevant) in dealing with the one matter which we have to decide, namely, whether that which the candidate did was or was not a violation of the law.'

Two Indian cases may be quoted to illustrate this corrupt practice.

In *Ballia* (1, I. E. P., 34) the Respondent, the Manager of the Dumraon Raj, filed a recriminatory petition as regards certain statements made by the petitioner or his agent. The first statement ran as follows :

' In 1917 and 1918 when the terrible Ganges floods had occurred and all the crops were destroyed south of the railway line and most of the houses in villages had fallen down, and our mothers and sisters had to pass time by standing in water which was in some places waist deep and in others thigh deep, was it not you who spent Rs. 60,000 on suits for the recovery of rent ? It is heard that you yourself admitted that the tenantry had to spend 3 or 4 lakhs of rupees in defending those cases. What harm would it have caused you or your updeshtaks (preachers), who go about crying that small disputes should be settled by *Panchayat*, if you had settled those cases between the Raj and the tenantry by *panchayat*, and thereby saved the poor tenantry from expenses and numerous troubles, but you never wanted such settlement. Do you ever do any good thing which you promise ? '

A second statement was :

' Have you ever paid attention to the young cows, heifers which are sold to butchers every year in the Dhanus Jug that is, Sudhast Baba's fair, which sale you can stop ? Is it not you who has introduced the sale of animals in the said fair ? '

The Commissioners reported :

' We are unable to exonerate the Petitioner. We find that he published Ex. L-1 which contains false statements and we find that there is nothing to show that he had any reasonable grounds for believing the statements to be true or for not believing them to be false. We find that he took no reasonable precautions to satisfy himself of the truth of the allegations made in that document. We find therefore that he had no reasonable grounds to believe that the statements made in Ex. L-1 were true or for not believing that they were false. As a result of our findings on the various issues we report that the Respondent 1 has not been duly elected. We also find that the Petitioner is guilty of corrupt practices as defined by schedule IV, part I, paragraph 4, and is therefore debarred from being declared elected himself. We order that parties shall pay their own costs.

Under rule XLV of the Electoral Rules we find that it has been proved that the Petitioner has committed a corrupt practice as defined by schedule IV, part I, paragraph 4, and we do not recommend that he be exempted from any disqualifications he may have incurred on this account under the rules.'

In the *Jaunpur* case (I. E. P., 1, 124) one of the statements complained of ran as follows :

‘ Therefore while electing your representative to the Council you should also bear in mind whether your representative has the signs and virtue of loyalty. Thakur Harpal Singh Sahib has both the qualities of loyalty and love of country and therefore you should elect Thakur Sahib. You should remove this idea from your minds that Malaviya will win *Swarajva* for you by arguing. *Swarajva* will be obtained by humility and loyalty. Krishnaji Maharaja bestowed all the gifts on Sudama Brahman by his prayers but Kans was killed on account of his pride. *Swarajva* was obtained by Bhabhishan. Rawan, though a leader like Malaviya, met with destruction.’

‘ The whole reference is to the policy of non-co-operation which is described as disloyal and therefore unlikely to result in any benefit to the nation. There is nothing in the paragraph which can refer to the Respondent except the words “ Rawan, though a leader like Malaviya, met with destruction.” The words, however, do not say more than that Malaviya is a leader. They do not say that he is like Rawan in any other respect. The paragraph does not say that the Respondent is in favour of non-co-operation or is disloyal.’

Another statement ran :

‘ If you consider Malaviya to be a very big leader, then it is your mistake. Only he who has a zamindari and who is managing a raj can know about politics, and one who does not own a “ dhur ” of land, what knowledge can he have about the management of an estate ? ’

‘ The Respondent owns a zamindari which pays Rs. 13 or Rs. 20 annual revenue and he manages it through his servant. It is perhaps an exaggeration to say that he does not own a “ dhur ” of land. It is quite true, however, that he is not a practical zamindar and the criticism made in regard to him therefore, has justification. We do not find that there is any reflection upon the personal character or conduct of the Respondent in the sentences just quoted above.’

Part II of Schedule IV includes as a corrupt practice any act specified in Part I when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent. Under rule XLIV the election shall be void if any corrupt practice specified in Part I of Schedule IV has been committed or if the election of a candidate has been procured or induced or the result of the election *has been materially affected by a corrupt practice.*

In *Attock* (I. E. P., 11) the Commissioners held that

‘ It is sufficient to say that we hold that it is not proved that such defamatory statements were made by or with the connivance of the Petitioner or any authorized agent of his, and if any unduly zealous supporter of the Petitioner did make such statements, there is no attempt to prove that such corrupt practice had any material effect on the result of the election, as it obviously could not.’

As observed earlier, agents must be careful, and a candidate or election agent should impress the need for caution on all whose assistance he takes, whether paid or voluntary.

## CHAPTER XV

### OTHER CORRUPT PRACTICES

IN the English Election Law there is a clear distinction drawn between 'Corrupt Practices' and 'Illegal Practices'. Judicial pronouncements have emphasized this distinction.

'A corrupt practice is the thing the mind goes along with. An illegal practice is a thing the Legislature is determined to prevent, whether it is done honestly or dishonestly' (*Barrow-in-Furness*, 1886 : 4, O'M. & H., 77).

'An illegal practice involves no question of motive, pure or otherwise. The only question the court has to consider is whether there has been a breach of the Act.' (*Walsall*, 1892 : 4, O'M. & H., 123).

These two extracts are cited by Sir Hugh Fraser at p. 70 of 'the Law of Parliamentary Elections'. The same author, however, points out that the incurring of an expense by any person other than the election agent without authority is in England a corrupt, not an illegal practice, under Section 34 of the Representation of the People Act, 1918. 'It is submitted,' says Sir Hugh Fraser (*loc. cit.*, p. 142) in view of the language of sub-section (2) of Section 34

'that a person can render himself guilty of the "corrupt practice" thereby created without having any corrupt intention or motive, and it is, therefore, advisable for any person who intends to hold a public meeting or to issue literature of a political character to consider carefully whether his action may not involve a breach of the section, and if so to obtain the requisite authorization.'

In the Indian electoral rules we do not find the expression 'illegal practice'.

Schedule IV to those rules recognizes only corrupt practices, but these of two kinds, given in Part I and Part II respectively. Act XXXIX of 1920, the 'Indian Elections Offences and Inquiries Act', deals with election offences generally, but the distinction is maintained in the penalties awarded. We may therefore for the purpose of popular exposition say that offences in connexion with elections or corrupt practices are divided in India into two classes 'Major and Minor'.

The 'Major' or more serious corrupt practices are, as we have already seen :

1. Bribery.
2. Undue Influence.
3. Procuring, by a candidate or his agent, of Personation.
4. The Publication of false statements, and
5. Illegal Expenditure, i. e. in excess of a prescribed maximum.
6. Failure to lodge return or false return of election expenses.

(Rule V (4).)

The ' Minor ' corrupt practices are :

1. Any of the above done without the connivance of the candidate or his agent.

2. Personation.

3. Receipt of a bribe.

4. Payment for the conveyance of an elector.

5. Hiring or use of public conveyances.

6. Incurring expenses without authority.

7. The hiring of liquor shops, and

8. The issue of circulars without the Printer's and Publisher's name thereon. The commission of a major corrupt practice, we have also seen, is attended with very serious consequences. Not only does it involve disqualification from exercising any electoral right for a period of five years, but also disqualification<sup>1</sup> of the person convicted from—

(a) being appointed to, or acting in, any judicial office :

(b) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached ;

(c) being elected or sitting or voting as a member of any local authority ; or

(d) being appointed or acting as a trustee of a public trust.

We may now shortly examine the ' Minor ' corrupt practices. These while punishable will not necessarily avoid an election, as would for example one proved case of bribery or a deliberately incorrect return of election expenses. The commission of any one of these less heinous corrupt practices will only disqualify for three years and not for five.

**4. *Payment for Conveyance.***—Any payment or promise of payment to any person whomsoever on account of the conveyance of any elector to or from any place for the purpose of recording his vote.

**5. *Hiring or use of Public Conveyances.***—The hiring, employment, borrowing or using for the purposes of the election of any boat, vehicle or animal usually kept for letting on hire or for the conveyance of passengers by hire :

Provided that any elector may hire any boat, vehicle or animal or use any boat, vehicle or animal which is his own property, to convey himself to or from the place where the vote is recorded.

In 1858 a case was taken to the House of Lords for decision whether the payment of a voter's travelling expenses was legal. Lord Wensleydale said,

' If payment or repayment of the voter's travelling expenses in this particular case was promised with a condition expressed or implied to vote for a particular candidate then, in my opinion, it was an offence within the Act of Parliament, although these travelling expenses were perfectly fair and reasonable.'

<sup>1</sup> Vide § 13 of Indian Elections and Inquiries Act (XXXIX of 1920), and rule VII (2).

The legislature then passed 21 & 22 Vict., c. 87, which by section I allowed candidates to provide the conveyance of a voter to the poll. In 1867, however, such payment was definitely made illegal and this has been reproduced in Part II (4) of the schedule under consideration.

A candidate, therefore, in India cannot either give a voter his railway ticket nor hire a motor-car or *ticca gharri* to convey him to the poll. He can, however, use his own motor-car or carriage or those of his friends provided that in the latter case they bear all charges. The candidate would be wise to let the owner of the motor-car pay the chauffeur and supply the petrol. Neither he nor they can let or hire, lend or borrow, employ or use any public stage or hackney carriage. In India it has been found necessary to include also a boat; and an animal, having in view doubtless the elephant or camel. The candidate's own elephant, gaily caparisoned, may be utilized to convey his supporters to the poll.

Clause 4 does not debar a candidate or an election agent from arranging for the conveyance of his sub-agents or canvassers, and he may place his motor-car at the disposal of any agent who is willing to assist him by making speeches at public meetings. The irregularity of the payment consists in *conveying an elector to the poll*. If the elector is not willing to come of his own accord, the candidate may not pay his conveyance charges, though he may provide him with a conveyance provided this is not hired by the candidate or his agent, and is not one usually let out on hiring. The candidate can therefore send his own motor-car to bring up voters or, if he is fortunate enough to get them, borrow motor-cars from his friends for that purpose. Any expenditure he incurs on such motor-cars should be shown in his election expenses. An elector can of course hire a licensed vehicle for the purpose of taking himself to the poll, and there is nothing to stop four or five electors jointly contributing to hire such a vehicle.

In England, as has been noticed in the chapter dealing with organization, the arrangements for the conveyance of electors are very important. When any vehicles are borrowed care must be taken that there is no understanding expressed or implied that the lender is to receive any reward or payment.

'Under no pretence must any payment, gift, offer or promise, either in money or kind, be made by, or on behalf of, the candidate or his election agents to the coachman or driver, nor must any person be hired or paid to drive a borrowed vehicle' (Parker, p. 297).

In *East Dorset* (6, O'M. & H., 48) the candidate's mother paid for the hire of two motor-cars for her own use and lent her two cars to assist her son in his election campaign. It was held that the hire of these two cars was expenditure for the conduct and management of the election, but it was not definitely decided, when her two cars lent to the candidate had been used for the conveyance of voters, whether the fact that substitutes for these cars had been hired would amount to an illegal payment for the conveyance of voters to the poll.

It is to be remembered that the payment of travelling expenses may amount to bribery if such payment is made on the condition, expressed or implied, that the recipient should vote for a particular candidate. (See *Pontefract*, Day's Election Cases, p. 131).

### *Incurring Expenses without Authority*

**6. The incurring or authorization of expenses by any person other than a candidate or his election agent on account of holding any public meeting or upon any advertisement, circular or publication or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, unless he is authorized in writing so to do by the candidate.**

As regards the incurring of expenses without authority it is to be noticed that such expenditure must be 'for the purpose of promoting or procuring election of a candidate'. Why, it may be asked, should Mr. A., who wishes to help Mr. B. to return to the Legislative Assembly, be debarred from holding a public meeting at which he can make a speech in support of Mr. B.'s candidature? Why must he first obtain either Mr. B.'s authority or that of Mr. B.'s election agent? In the first place, the legislature is anxious to ascertain *all* the expenditure incurred by any candidate or his election agent, as being probably the best way of preventing corruption. Obviously therefore if other persons could incur such expenditure, this would not be included in the return and the candidate would be able to spend a much larger sum than any minimum prescribed under rule XX. Apart from this it was found in England as a matter of fact that the incursion of a large number of stray speakers into a constituency at the time of an election was a matter which called for control. Further when there were political associations some candidates allowed these associations to indulge in meetings at which refreshments were provided, and reimbursed the associations for the expense incurred at a subsequent date.

There is a difference between an act done 'in the conduct and management of the election' and an act done to promote the cause of a particular candidate. A leading case in England on this subject is *Cockermouth* (1901 : 5, O'M. & H., 158).

If another person pays an expense and that expense is one of the ordinary expenses of the candidate so that the doing of that by the third person relieves the candidate from part of his election expenses, then the candidate must treat that assistance as given to him in respect of his election expenses, and must treat the expenses as part of his expenses. If he, being merely a person interested for some reason as a Liberal Unionist or any other reason in the success of a particular candidate, chooses to do things on his own account, which do not go to relieve the candidate from any portion of his election expenses, that is not doing anything in reference to "the conduct or management

of the election." No candidate can prevent any people who think they would like him to be elected, because they think him more in accordance with their own special views, either upon vaccination or upon temperance or any of the other things which people have strong opinions about, incurring expenses, printing literature, and doing various things in support of the particular candidature, and none of those things comes into the candidate's expenses.'

A Zamindar therefore who wishes to assist a friend and decorates any roads in the town or village might, unless such expenditure were authorized by the candidate and taken into the candidate's accounts, which should show the expenditure both as money received for the purpose from the Zamindar and as expenditure incurred, might endanger his friend's election. The same reasoning would apply, it is submitted, to any expenditure incurred on advertising or to payments made for the insertion of newspaper articles advocating a particular candidate's return. In dealing with the questions of election expenses reference was made to Section 171 H, Part IX A, of the Indian Penal Code dealing with illegal payments in connexion with an election. Any person incurring or authorizing such an illegal payment may be punished with fine which may exceed Rs. 500, provided, however, that he may within ten days obtain the approval in writing of the candidate to the payment of such expenses, if they did not amount to more than Rs. 10.

### *Hiring of Liquor Shops*

**7. The hiring, using or letting, as a committee-room or for the purpose of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public.**

Indian candidates may regard it as strange that they should be forbidden to hire a liquor shop as a committee- or meeting-room. They owe this prohibition to one of the national characteristics of the country in which these rules had their origin. In the last century alcoholic liquor played a very important part in elections. As remarked by Wills, J. :

' There is inherent in a great many people, with whom we have had to deal in this inquiry, the habit of giving and accepting drinks ; it is as natural for them to treat and be treated, as it is to have their breakfast or their dinner, or anything else that forms part of their daily life ; and to suppose that such habits would be dropped at election time is preposterous.' (*Montgomery*, 1892 : *Day's Election Cases*, 150.)

Recent legislation in England has put an end to much of this hospitable entertainment, but electioneering is dry and thirsty work, and the proximity of the means of satisfaction would doubtless be a grave source of temptation. In India as we have seen in dealing with ' Treating ' the danger does not, however, lie in the love of wine.

There was for some years in certain parts of England a custom known as 'wiping the slate'. It meant in effect that any one could go to the public house and have a drink the price of which was (previous to the law prohibiting the supply of liquid refreshment on credit) entered on a slate. It was tacitly understood that those entries would be erased that night. The recipients thus refreshed and freed from liability for payment, were then able in cheerful frame of mind to attend any political meeting and display their enthusiasm for or against the candidate as they might be directed. This rule regarding the admission of electors to a place where intoxicating liquor is sold is in fact an outcome or by-product of the law of 'treating'.

*Issue of Circulars, &c., without Printer's and Publisher's Name printed thereon*

**8. The issuing of any circular, placard or poster having reference to the election which does not bear on its face the name and address of the printer and publisher thereof.**

As regards advertisements and placards, preferably persons whose regular occupation it is to print and publish such should be employed; in other words the printing of your electoral literature and advertisement should be placed with a recognized contractor. It is unwise for an election agent to spread the work about among his friends and supporters.

The election agent must insist on making all payments and collecting all bills. Should he discover on being appointed that some payments have already been made he should arrange for a refund of such payments and then pay the bills himself and obtain a receipt in his name. He must always be on his guard to see that no expenses are incurred which a Court could regard as 'colourable'. For example, if he employed a large number of persons to distribute handbills, including among those persons who had the right to vote, it is possible that such expenditure might avoid the election.

The object of this rule strictly limiting expenditure to the candidate, his election agent or a person 'authorized in writing by the candidate', is of course to fix responsibility. Once more it is desirable to sound a note of warning regarding the dangers of voluntary assistance, and to insist on the safeguards observed in England under which the election agent gives printed instructions to all his sub-agents, paid and unpaid, setting forth clearly what they may do, what they may not do, and what are the penalties they and others incur for wrongful acts and omissions.



## CHAPTER XVI

### THE ELECTION PETITIONS AND INQUIRIES

WE have now gone through the various stages of an election : the revision of the electoral roll : the nomination of the candidate and perhaps the appointment of his election agent : and finally the poll, with the declaration of the result. The turmoil of an election may not, however, end with the letter of the returning officer to the Secretary to the Legislative Council giving the names of the successful candidates. It is possible that the final stage may be an 'election inquiry'. It is in fact the law derived from judicial decisions in such inquiries that forms the greater part of an election agent's library. As already mentioned the possibility of an election petition is a contingency which the election agent and his candidate must never forget.

Defeat is always bitter ; and the unsuccessful candidate is prone to attribute his rival's success to malpractices, rather than to his or to his agent's shortcomings, a view in which he may be encouraged by the latter. He will be told that there are no less than fifty recognized grounds sufficient, on production of the necessary evidence, to unseat his rival. They are set forth at length in a specimen petition in Jelf's *Illegal and Corrupt Practices*. He would do well, however, also to bear in mind three facts : First,

'There is no legal proceeding which is more far-reaching in its effects, which excites a greater amount of animosity, personal feeling and hostility, and whose end it is more difficult to foresee. An election petition resembles, in some respects, a criminal trial : it is easy to launch—it is difficult to withdraw—and for the same reason. It is no mere issue *inter pares*. The whole constituency itself is in a sense upon its trial.' (*Loc. cit.*, p. 64).

The Public Prosecutor in India may be (in England he must be) present in the interest of the public morals : he will certainly see that there is no improper smothering of the petition. Under rule XXXIX (4) no election petition may be withdrawn without the leave of the Governor or the Commissioners, which *shall* be withheld if it is thought that 'the application for withdrawal has been induced by any bargain or consideration, which in the opinion of the Governor or the Commissioners ought not to be allowed'.

Secondly, few law suits are more difficult or expensive. The petitioner apart from losing his deposit of Rs. 1,000 (£1,000 in England) may be cast in very heavy damages. He is certain to cause a lot of trouble to his friends, and his attempts to get and to retain the necessary

evidence may prejudice his chances at a future election. When the charges are disclosed, again to quote Mr. Jelf,

‘ enormous influences are likely to be brought to bear upon the various witnesses, and it is no exaggeration to say that the petitioner’s advisers have often to watch their witnesses like valuable race-horses during the time between the delivery of the particulars and the hearing.’

It is to be noted that in India under rule XXXIII the petition shall contain ‘ a statement in concise form of the material facts on which the petitioner relies ’ and must ‘ be accompanied by a list . . . setting forth full particulars of any corrupt practice ’. The petitioner must, therefore, disclose his evidence at an earlier stage than is the case in England.

Thirdly, the law recognizes ‘ recriminatory charges ’. Rule XLII of the election rules allows the returned candidate or any other party to ‘ give evidence to prove that the election of the petitioner would have been void, if he had been the returned candidate and a petition had been presented complaining of his election ’. Any candidate who contemplates filing an election petition will, therefore, first ascertain that he *and all his agents* can ‘ come into court with clean hands ’.

Having given this serious warning let us now examine the procedure of an election petition. The election petition must be presented ‘ to the Governor ’<sup>1</sup> and must reach him either directly, or through the Secretary to the Legislative Department of the Government concerned within fourteen days from the date of the receipt of the return of election expenses by the returning officer. (See p. 73 *supra*.) It has long been the rule that complaints should be verified by the plaintiff. Section 15 (2) of Schedule I, Order VI of the Code of Civil Procedure, provides that ‘ the person verifying shall specify by reference to the numbered paras. of the pleading what he verifies of his own knowledge and what he verifies upon information received and believes to be true ’. It may be presented by any candidate himself or by any elector. The petition will be sufficient if made in the following form :

To

His Excellency the Governor of .....

The humble petition of .....

Respectfully sheweth :—

(1) Your petitioner A is a person who voted (or had a right to vote, as the case may be) at the above election (or claims to have had a right to be returned at the above election, or was a candidate at the above election) and your petitioner B (here state in like manner the right of each petitioner).

(2) And your petitioners state that the election was holden on the day of ..... A.D. when A. B., C. D. and E. F. were candidates, and the Returning Officer has returned C. D. as being duly elected.

(3) And your petitioners say that (here state the facts and grounds on which the petitioners rely), a list of which accompanies this petition.

(4) And your petitioners have deposited the sum of Rs. one thousand

<sup>1</sup> Rule XXXII.

in the Government Treasury at . . . , a receipt for which payment is filed.

Wherefore your petitioners pray that it may be determined that the said C. D. was not duly elected or returned, and that the election was void (or that the said A. B. was duly elected and ought to have been returned or as the case may be).

(Signed) A.

B.

Verified.

The Governor will then appoint three persons as Commissioners and name the places where the inquiry shall be held. After that it will rest with the Commissioners to decide where evidence will be taken. The procedure observed in the trial of civil suits will be followed 'as nearly as may be'. The two main differences have already been noticed : first, the difficulty of withdrawal and denial of opportunity for any compromise : secondly the presence of the Government Advocate or some person acting under his instructions.

Rule XXXII deals with the presentation of the petition. It will be noticed that the petition is time-barred unless presented within fourteen days from the date when the return of election expenses has been received by the returning officer. This important amendment was introduced in 1923. Should, however, a candidate or his election agent or any person (acting with their connivance) be convicted of a corrupt practice as defined in Chapter IX A of the Indian Penal Code, an election petition can be presented within fourteen days from the date of such conviction. Presentation may be either personal or by a person authorized in writing by the petitioner or by registered post. If holidays intervene these, under sub-rule (3), of rule XXXII, will be omitted in calculating the period of fourteen days.

The petition must be accompanied by :

**(A) A list signed and verified, setting forth 'full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice'.**

This also is a most important amendment introduced in 1923. It should help to remove much of the trouble which attends upon the inevitable battle for 'particulars'.

In the annexure to the report on the *Lahore* case (1, I. E. P., 143), it was held that 'particulars not being defined wide discretion would appear to be left as to the interpretation of what particulars mean'. Following the directions in the Civil Procedure Code, the Court was

'given power to allow alteration or amendment of pleadings at any stage of the proceedings upon such terms as it thinks just and all amendments necessary to determine the real questions in controversy shall be made. . . . We consider that we should be stifling inquiry—

a course deprecated by Blackburn, J., in the *Staley-Bridge* case (1, O'M. & H., 72), if we do not now permit fuller particulars to be given. We are satisfied that there was no wilful suppression of particulars in the present petition, and by the action which we shall now take we shall ensure that the respondent will not be taken by surprise.'

On the other hand, in the *Saharanpur* case (1, I. E. P., 199),

'we hold that rule XXXV, only makes the Civil Procedure applicable to the conduct of the inquiry and not to the petition. In the case of an ordinary civil suit the trial court is empowered to accept, reject, or at any time amend the plaint. This is not so with an election petition which under rule XXX<sup>1</sup> can be accepted only by the Governor within a limited period of fourteen days from the date of publication of the result of the election. Further, there is no provision anywhere in the Act or the rules for the amendment of a petition. Indeed, any such amendment appears contrary to the whole tenor and spirit of the rules. The short time limit permitted and the insistence in rule XXXI<sup>2</sup> on the furnishing at once of the full particulars are evidently intended to insure that the returned candidate shall without any delay be informed of the exact nature of the case against him and of the charges which he will have to meet. To allow amendments and additions would be to defeat this very salutary provision.'

Later on we shall discuss the extent of amendment permissible under this amended rule.

**(B) 'The sum of one thousand rupees in cash or in Government promissory notes of equal value at the market rate of the day.'**

Under rule XXXVI if the petitioner has not presented his petition within time, or if it is not in proper form, or is not accompanied by the list referred to in rule XXXIII (2), and the deposit of security, the Governor *shall* dismiss the petition. This throws upon the Legal Remembrancer, or whoever may be authorized in this behalf by the local Government the duty of a careful scrutiny of any election petition in order to see whether it complies fully with the provisions of rules XXXII, XXXIII, and XXXV, or whether it should be dismissed *in limine*.

The following is suggested as a suitable concise form of the list of specific charges to be filed with the petition.

<sup>1</sup> Now rule XXXII.

<sup>2</sup> Now rule XXXIII.

<i>S. trial No.</i>	<i>Charge.</i>	<i>Date.</i>	<i>Place.</i>	<i>Persons concerned.</i>	<i>No. on electoral roll.</i>	<i>Persons who committed the offence.</i>
1	Offering Rs. 2	November 2nd, 1920.	Bhowanipur Electoral Division No. 2 Urban.	Son of Ahmed Baksh, Tailor.	241	Agent (name unknown) for candidate respondent.
2	Expenditure on illegal conveyance.	November 16th, 1920.	Alipore Electoral Division No. 5 Urban.	Tenga Ram, Syce, Hackney carriage driver. 1. Sitanath. 2. Prayag. 3. Ramnath.	Not an elector. 452 353 354	Dashputta Sanayal. On behalf of the respondent.
3	Undue influence saying he would increase Dwaraka Rai's rent.	On or about October 10th, 1920.	Village Mahadupur Electoral Division No. 4 Rural.	Dwarka Rai	37	Prophulla Banerji, son of the candidate's election agent.
4	Omission to give name of publishers on printed document entitled 'Advice to respectable men'.	During week September 20th-27th, 1920.	Throughout the constituency.	Caledonian Press.	Not an elector.	Hari Das Banerji election agent.
5	Publication of untrue statement that petitioner is in the habit of taking intoxicating liquor.	September 20th, 1920.	National School, Mahadupur.	—	—	Abinash Chandra Chatterji in presence of Hari Das Banerji, election agent

The amendment made in 1923 follows a suggestion made by Mr. Justice Bruce in the *Lancaster Division* case (1895, 5, O'M. & H., 41) that :

' he would much prefer to see in a petition, instead of a general allegation of corrupt and illegal practices, separate paragraphs setting out the character of the offences charged against the Respondent, so that he might be informed from the first of the general character and nature of the charges preferred against him. The only information originally given with reference to the charges included in the particulars in question, were the words in the petition, " other corrupt and illegal practices ". That was very much the same as if a charge was made in an indictment of " other felonies and misdemeanours ". If such a thing were to be allowed, Petitioners would be able to allege in general terms corrupt and illegal practices on the part of the Respondent, and say no more ; and then, from time to time, by delivering particulars, amended particulars, and further amended particulars, keep on adding new charges without any regard to the provisions of the Act relating to the limitation of time. It was clearly too late to amend the petition, and why should a rule be applied to the amendment of particulars which would not apply to the petition ? If so, the intention of the Act that such charges should be formulated within a definite period, would be entirely frustrated. The Court ought not to allow

particulars to be amended in such a way as to bring in charges which were not pointed at by the petition. Charges in an election petition were of a very serious nature, and could not be dealt with in the same way as particulars in a civil action. It was the duty of the Court to see that such charges should be formulated in definite terms, and that they should not be brought by the Petitioners from time to time after the expiration of the statutory period.'

It is submitted, however, that following the case law in England less definite particulars would be required in the case of general corruption than in the case of specific charges of bribery (*Wigan*, 1881, 4, O'M. & H., 2). Under rule VI of the Parliamentary Election Petition rules in England :

'evidence need not be stated in the petition, but the Court or a judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial in the same way as an ordinary proceeding in the Court of Common Pleas, and upon such terms as to costs and otherwise as may be ordered.'

This rule XXXIII states the general principle, but sub-rule (3) gives the Commissioners discretion at any time to 'allow the particulars included in the said list to be amended, or to order such further and better particulars in regard to any matter referred to therein to be furnished as may in their opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition'. Doubtless in course of time there will be elaborate and lengthy arguments as to how the word 'amended' in this provision is to be interpreted by the election Courts. Does 'amendment' for example include 'amplification'? In this connexion reference may be made to an important decision (*Pontefract*, 1893 : O'M. & H., 4, 202). Per Cave, J. :

'to my mind no particulars ought to be delivered unless the Petitioner has in his possession some evidence in support of them which he can lay before the Court. Suspicion is not sufficient to justify the insertion of a charge in the particulars. That may justify the wideness of the petition, but it does not justify the wideness of the particulars, because they are intended to give the Respondent notice of what are the charges which are intended to be proved against him, and it is necessary for his defence that he should at once incur the expense of investigating those cases and for preparing himself for trial.'

In *Manchester* (1892 : Day's Election Cases, 153) the same judge said :

'Those who draw particulars should understand they are not at liberty to throw charges about broadcast, but should confine themselves, as far as can reasonably be done, to those charges which they actually have the means, or expect to have the means, of establishing at the trial.'<sup>1</sup>

In the *Birbhum* Petition (1. I. E. P., 78), subsequently allowed to be withdrawn, the reader will find not only an extremely wide petition covering most of the grounds on which an election can be impugned, but also, with the exception of pars. 19 and 22 of the grounds for the petition,

<sup>1</sup> Quoted by Fraser, p. 218. Third edition. His remarks in Appendix I of the Law of Parliamentary Elections are most valuable.

an entire absence of any such details as might enable the Respondent to meet the charges. Following the decision in *Pontefract*, given at greater length in Day's Election Cases (p. 15), it would seem that where a proper list of particulars has been delivered it can be amended by leave of the Court, so as to cover other charges within the petition, where the omission is due to the fact that the other charges had not been discovered when the particulars were delivered. Any application for leave to amend should be made on affidavit. Further, it must be remembered that, in the interests of public probity, an election Court may consider it desirable to follow up a certain line of inquiry by the admission of other charges. In a case already quoted (*Wigan*)<sup>1</sup> Mr. Justice Bowen said,

'the object is, that the parties who come here to try an election petition and defend the seat, shall not have matters sprung upon them in such a way as to embarrass them in the answer they give; and it is clear that it would embarrass the sitting member very much if he were to have cases of bribery or cases of treating sprung upon him at the last moment. Particulars, therefore, are ordered before the trial, and particulars are ordered, of course, to be given to the extent to which they can be given, that is to say, so far as the knowledge and information of the persons upon whom the order is made enables them to comply with the order. In this case full particulars have been given. A number of names have been given of persons who are supposed to have been treated or bribed at particular places, and at the end of the list of names comes this, that persons are supposed to have been bribed whose names are at present unknown; and the persons who are presenting the election petition may really be *bona fide* ignorant of the names of the persons who were receiving bribes or being treated at that particular place; and they ought not to be prevented from going into those cases simply because they cannot give the names of the persons with respect to whom the criminal act is supposed to have been committed. What they are bound to do is to tell the most they can at the time these particulars are given; and, at all events, before the trial to tell as much as they can to prevent surprise or expense. But it is said that the order for particulars has been drawn up by the Court in a form that the Petitioners are to be "precluded at the trial of the petition from going into any case of which the aforesaid particulars have not been delivered." . . . I should be perfectly prepared to take broader ground, and say that a judge sitting here to try an election petition can at any moment receive any evidence, provided he takes care that there is no surprise upon the sitting member by its being tendered.'

Regard being paid to rule XXXIII (3), if the original petition was accompanied by a full and satisfactory list of particulars, it would seem that similar discretion could be exercised by an Indian Election Court.

In *Beverley*, 1869 (1, O'M. & H., 147),

'the particular is not to limit the witnesses who are called, but merely to limit the acts which are relied upon for the purposes of unseating the Respondent.'

<sup>1</sup> 1881 : 4, O'M. & H., 3.

Suppose that the statutory period fixed by rule XXXII has expired, and that it is brought to the notice of a candidate that the returned member has subsequently made a payment or fulfilled a promise made to obtain a vote in respect of the past election, his proper course would be to institute a case under Section 171 E or 171 F of Chapter IX A of the Indian Penal Code, and then, on obtaining a conviction, present a petition within fourteen days from the date of sentence.

The grounds for an election petition may briefly be summarized :

1. *Rule V* ; the disqualification of the candidate, including his failure to lodge his return of election expenses ' within the time and in the manner prescribed '. (See also rule XIX.) The amounts with items of the sums and expenses alleged to have been paid and incurred respectively on account of and in respect of conduct and management of the election in excess of any prescribed maximum should be stated.

2. *Rule X* ; that persons voted who should not have been allowed to vote. This ground would be used in a petition asking for a ' scrutiny ', when the election Court will go behind the ballot papers and scrutinize the qualifications of the voters who marked them. The votes under objection, recorded by the agents of the candidate, should be specifically mentioned in the list of particulars. The candidate of course runs the risk of proving personation in his own interest. He may for example object to the acceptance of a vote on the ground that the elector was ill in bed, and it may be proved that some one representing the elector recorded his vote. Yet that vote may have been given in favour of the petitioner. A petition for a re-count or for scrutiny should ordinarily only be presented in the case of a very narrow majority, where the transfer of a few votes may unseat the successful candidate.

3. *Rules XI and XIII* ; the acceptance of a faulty nomination by the returning officer ; the rejection of a proper nomination ; or irregular procedure at the time of nomination.

4. *Regulations made under rule XV* ; inadequate provision at polling stations ; denial of opportunity to vote ; absence of presiding officer ; delay in opening polling station ; closing of polling station before due time ; insufficient assistance to illiterate electors ; lack of secrecy ; unsafe custody of ballot papers ; or mistakes in counting votes.

5. *Rule XVI* ; failure of member returned for more than one constituency to make his choice within the time prescribed of the constituency which he wishes to serve.

6. *Rule XVII* ; employment of disqualified election agent. Should a candidate be so foolish as to employ or to recognize the employment of a person who had been convicted of corrupt practice this might also be a ground for a petition, if proof of any specific corrupt practice was forthcoming.

7. *Rule XIX* ; *delay or omissions by candidate in return of election expenses*. Full particulars as to the payments made and omitted, or as to illegal payments should be given in the list of particulars, together



with the names of the persons paying and receiving the sums of money, and the time and place of each transaction as far as possible. Under the rules as framed in 1920 the election petition had to be presented at a date subsequent to the last day appointed for the declaration of election expenses. Consequently, as was pointed out in the *Attock* case (1, I. E. P., 19), it was difficult for an election Court to inquire into the question of falsity of return. This difficulty has been removed by the amendments made in 1923, and the return of election expenses can now be inspected by the other candidates, and by electors, on payment of a fee of R. 1, and thus made the grounds of an election petition.

8. *Rule XLIV.* (a) and (b) Corrupt Practices.

9. *Rule XLIV.* (c) When the result of the election *has* been materially affected by any non-compliance with the provisions of the act or the rules or regulations made therein.

10. *Rule XXXII.* (b) General corruption or general intimidation. The petition based on these grounds may be presented either by a candidate or elector or by an officer empowered by the local Government in this behalf. The latter is allowed thirty days, as against fourteen granted to the former, from the date of return of election expenses. An instance of general intimidation will be found in the report of the *Lahore* case (1, I. E. P., 138).

‘It is further admitted that the campaign of intimidation was directed against all voters, no matter for whom they might have been going to vote and was organized by a political body known as non-co-operators.’

From the above and a perusal of the rules quoted it will be seen that there are five kinds of election petitions.

A. An ordinary petition alleging certain definite offences by a candidate, either personally or by an agent.

B. The petition which also claims the seat (rule XXXIV). This may be met by a recriminatory petition. (Vide rule XLII.)

C. A petition for recount of votes, where it is believed that the counting has been carelessly done.

D. A petition for a scrutiny of the ballot papers, where there is reason to believe either that these were improperly inspected or that they lacked the official mark, in other words, a petition, impugning the conduct of the presiding officer at the poll or the decisions of the returning officer at the time of counting.

E. By an officer of Government under rule XXXII (b).

The president of the Commission may take the necessary steps as regards publication of the petition in the ‘Gazette’, service of notice on each Respondent, and the execution by the Petitioner of a bond for the payment of further costs. The completion of all the preliminaries including the summoning of witnesses before the Commissioners, assemble tends to economy. It is not perhaps generally appreciated that an election inquiry is a very expensive business for the taxpayer—

so expensive in fact that considerable expenditure on equipment or clerical assistance at the time of polling or counting votes is fully justified, as an insurance against the commission of such irregularities as might provoke an election petition.

The petition once delivered, a copy is published in the *Gazette* and served on the respondent, who naturally will have to test, as best he can, the evidence on which the petitioner relies. In this matter considerable care is necessary, and generally speaking it is inadvisable to approach the persons named directly, but first to make inquiries amongst the neighbours or associates. Thus in the case already mentioned *Wigan* (1881) Grove, J., strongly condemned the practice of obtaining signed statements.

‘ During the course of a trial the plan of getting witnesses waiting to be examined, poor ignorant men who do not know whom to please or to displease, into a room alone with a solicitor and examining them is extremely reprehensible and a thing which does not tend to the furtherance of justice and which does a great deal of harm in every way. . . . There is another matter which is incidental, upon which, I think, it is important to express my opinion and that is the question of getting witnesses who have been subpoenaed, or are likely to be subpoenaed, by the other side, to make statements and in some cases getting them to sign already prepared statements. This is not the first time that it has been done . . . but it has never been successfully done, and it is, I believe, useless to the parties.’

So also Lawrence, J., in *Worcester* (1906).<sup>1</sup>

‘ It is a most improper proceeding to take a statement from a man who has already made one to the other side. The object, no doubt, is to make the man’s evidence of no value, and no doubt it would do so in an ordinary case. It does not have that effect in these cases, but it is a most improper and a most dangerous thing to do, and it has been condemned again and again by judges who have tried election petitions.’

In England the position of the Public Prosecutor at an election inquiry has been carefully defined by the Legislature. He is to see that there is no suppression of evidence, no collusion between the parties, and to intervene in the actual inquiry only upon the invitation of the Court or under section 43 of the Corrupt Practices Act. The material part of this section is as follows :

43 (1) On every trial of an election, the Director of Public Prosecutions shall by himself or by his assistant, or by such representative as hereinafter mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the election court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

(2) It shall also be the duty of such Director, without any direction from the election court, if it appears to him that any person is able to

<sup>1</sup> 5, O’M. & H., 214.

give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3) It shall also be the duty of the said Director, without any direction from the election court, if it appears to him that any person who has not received a certificate of indemnity has been guilty of a corrupt or illegal practice, to prosecute such person for the offence before the said court, or if he thinks it expedient in the interest of justice before any other competent court.

In *Montgomery* (1892)<sup>1</sup> it was held that the Public Prosecutor might make any suggestion to the Court, but that he ought not to receive instructions from either side, and could not cross-examine witnesses except upon the invitation of the Court.

Lastly it may be observed than an election inquiry, as the outcome of an election petition, is a judicial rather than an inquisitorial proceeding. 'It is a court to hear and determine according to law, and not a Commission armed with powers to inquire into and suppress corruption.' *Taunton* (1870).<sup>2</sup> At the same time in *Windsor*<sup>3</sup> a few years earlier it had been held by Willes, J. :

'I consider my duties to be judicial and not inquisitorial, except in so far as it would be proper that I should follow up any clue which the evidence laid before me by the one side or the other may furnish. . . . It is only where a clue to the existence of such corrupt practices is presented by the evidence properly and formally laid before me that I shall think it necessary . . . to send for parties and papers with a view to investigate a subject which I consider to be out of my jurisdiction.'

Apart, therefore, from the definite finding and report under rules XLIV and XLVII, it appears that the Commissioners in India will leave it to the Advocate-General or Officer appointed by them to initiate any prosecution under Chapter IX A of the I. P. C.

The proviso to rule XLVII was introduced as an amendment in 1923. The Commissioners, it will be seen on a perusal of the reported Indian Election Petition cases, could and did report to the Governor the names of all persons, not merely candidates or agents, guilty of any corrupt practice. Now no one can be so reported without being 'given a reasonable opportunity of showing cause why his name should not be so recorded'.

One more point remains to be noticed. In India it is necessary, in order to avoid an election, to prove that the result of the election has, under rule XLIV, been materially affected.

The point has come before Indian Election Courts in the following cases to which the reader's attention is drawn as showing the strict interpretation of the rule *Ballia* (1, I. E. P., 32), *Bulandshahr* (*loc. cit.*, 89), *Lahore* (*ib.*, 142), *Purnea* (*ib.*, 179), *Tanjore* (*ib.*, 226), and the 24-*Parganas* (*ib.*, 250-53).

<sup>1</sup> 4, O'M. & H., 167.

<sup>2</sup> 2, O'M. & H., 74.

<sup>3</sup> 1, O'M. & H., 7.

It will be seen that the Petitioner must establish as a fact that the result was (not might have been) materially affected. It may not be possible or indeed necessary for him to show that a certain irregularity actually gave the Respondent his majority: he must, however, be able to prove that either the Respondent gained or the Petitioner lost a definite number of votes.

There is no appeal against any order of an election Court. The Governor can, however, exercise his discretion in accepting recommendations inviting the disenfranchisement of certain persons, and the local Government can remove any disqualification imposed under rule V (2) & (3), and rule VII (2).

# APPENDIX I

## THE ELECTORAL RULES

(*Government of India Act, 1919, section 7.*)

*Section 72 A of the Amended Act.*

*Note.*—(1) For convenience of reference these rules are divided into two portions. The schedules numbered II A, III and IV and the rules printed on pages 178 to 204 are common to all provinces, subject to the variations noted against them in certain cases. The remaining rules and the schedules differ for each Province, as well as for the Council of State and the Legislative Assembly, and these rules fit into the 'common' rules in the positions shown by their numbers. The Burma rules also differ in certain cases from the Indian rules. The rules proper are numbered with Roman numerals, and the provisions of the schedules with Arabic numerals.

(2) The rules are those for election to Provincial Legislative Councils. Where these differ from the rules for the Council of State or Legislative Assembly the needful alteration is noted. Generally it may be said that, in the case of the Central Legislatures :

- (a) For 'Governor' read 'Governor-General'.
- (b) For 'Local Government' read 'The Governor-General in Council'.
- (c) For 'Secretary to the Council' read 'Secretary to the Government of India in the Legislative Department'.

(3) The regulations for the time being in force in any Province 'for the conduct of elections generally', or for the purpose of elections to the Legislative Council of that Province apply for the purpose of the holding of elections within that Province to the Council of State and the Legislative Assembly. The Province of Delhi adopts the regulations applicable to the Punjab. The Governor-General in Council may by notification in the Gazette direct that such modifications and adaptations as he may specify shall be made in the application of those regulations.

## RULES COMMON TO ALL PROVINCES

### PRELIMINARY

#### *Short Title and Commencement.*

- I. (1) These Rules may be called the.....Electoral Rules.
- (2) They shall come into force at once.

#### *Definitions.*

II. In these rules, unless there is anything repugnant in the subject or context,

- (a) 'the Act' means the Government of India Act ;
- (b) 'Commissioners' means Commissioners appointed for the purpose of holding an election inquiry under these rules ;
- (c) 'corrupt practice' means any act deemed to be a corrupt practice under the provisions of Schedule IV ;
- (d) 'election Agent' means the person appointed under these rules by a candidate as his agent for an election ;
- (e) *Gazette* means the [ \* ] Gazette ; and

\* United Provinces : [United Provinces Government].

Punjab : [Punjab Government].

Central Provinces : [Central Provinces].

Madras : [Fort St. George].

Bombay : [Bombay Government or Sind Official or both as the case may require].

Bengal : [Calcutta].

Bihar : [Bihar and Orissa].

Assam : [Assam].

Burma : [Rangoon].

In the case of the Council of State or Legislative Assembly, *Gazette* means the Gazette of India.

- (f) <sup>1</sup> 'Mahratta' means a person belonging to any of the following castes, namely, the Mahratta, Kunbi, Mali, Koli, Bhandari, Shimpi, Lohar, Kumbhar, Dhangar, Bhoi, Bari, Lonari, Bhavin and Deoli, or Shinde castes, or to any caste which the local Government may by notification in the *Gazette* declare to be a Mahratta caste.
- (g) 'Schedule' means a Schedule to these rules.

## PART I

## COMPOSITION OF COUNCIL AND CONSTITUENCIES

*Composition of Legislative Council.*

III. [See Rule for each Province, for the Legislative Assembly, and the Council of State commencing at page 205.]

## ELECTED MEMBERS

*Constituencies.*

IV. The elected members shall be elected by the constituencies specified in Schedule I, and the number of members to be elected by each constituency [ <sup>2</sup> and the number, if any, of seats reserved for <sup>Non-Brahman</sup> ~~Mahratta~~ members (hereinafter in these rules referred to as reserved seats)], shall [<sup>3</sup> subject to the provisions of that Schedule] be as stated therein against that constituency.

Provided that the local Government may by regulation divide into two or more constituencies any of the plural-member constituencies and may distribute among the new constituencies so created the seats entered in Schedule I against the constituency which has been so divided [but not so, however, as to reduce the total number of reserved seats].<sup>4</sup>

*For Council of State and Legislative Assembly.*

IV. The elected members shall be elected by the constituencies specified in Schedule I, subject to the provisions of that Schedule in regard to constituencies entitled to elect in rotation, and the number of members to be elected by each constituency shall be as stated therein against that constituency.

Provided that the Governor General in Council may by regulation divide into two or more constituencies any of the plural-member constituencies and may distribute among the new constituencies so created the seats entered in Schedule I against the constituency which has been so divided.

Note.—This proviso does not apply to the Punjab, Bihar and Orissa : in the Central Provinces the only plural-member constituency is Nagpur City *cum* Khamptee.

In the Central Provinces Rules there is a further proviso :

Provided that the provisions of this rule shall, in respect of the University constituency referred to in the said Schedule, first have affect for the purpose of the general election next following the date on which a University is constituted at Nagpur.

<sup>1</sup> In the Bombay Rule only.

<sup>2</sup> In the <sup>Madras and</sup> ~~Bombay~~ Rule only.

<sup>3</sup> In the Madras Rule only.

<sup>4</sup> The words in square brackets are omitted in the Council of State and Legislative Assembly Rules.

## PART II

## QUALIFICATIONS OF ELECTED MEMBERS

*General Disqualifications for being Elected.*

V. (1) A person shall not be eligible for election as a member of the Council if such a person—

- (a) is not a British subject ; or
- (b) is a female ; or
- (c) has already made the oath or affirmation as a member of the Council or of any other legislative body constituted under the Act ; or
- (d) having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court ; or
- (e) has been adjudged by a competent court to be of unsound mind ; or
- (f) is under 25 years of age ; or
- (g) is an undischarged insolvent ; or
- (h) being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part :

Provided that the local Government may direct that, subject to such conditions as it may prescribe, a Ruler of any State in India or the Rulers of any such States or a subject of any such State or any class of such subjects shall not be ineligible for election by reason only of not being a British subject or British subjects :

Provided further that the disqualification mentioned in clause (d) may be removed by an order of the local Government in this behalf.

*For Council of State and Legislative Assembly.*

Provided that, if the Ruler of a State in India or any subject of such a State is not ineligible for election to the Legislative Council of a province, such Ruler or subject shall not by reason of not being a British subject be ineligible for election

to the Legislative Assembly by any constituency in that province [and no subject of such a State shall for that reason be ineligible for election by the Delhi constituency] :

*Note.*—The words in square brackets do not appear in the Council of State Rule.

*For Burma only.*

Provided further that if a resolution is passed by the Council, after not less than one month's notice has been given of an intention to move such a resolution, recommending that the sex disqualification mentioned in clause (b) should be removed, the local Government may, with the consent of the Governor, make an order in this behalf providing that no woman shall be disqualified by reason only of her sex from being eligible for election as a member of the Council :

(2) A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for election for five years from the date of the expiration of the sentence.

(3) If any person is convicted of an offence under Chapter IX-A of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any Rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I., or in paragraph 1, 2 or 3 of Part II, of Schedule IV, such person shall not be eligible for election for five years from the date of such conviction or of the finding of the Commissioners, as the case may be ; and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for three years from such date.

(4) If in respect of an election to any legislative body constituted under the Act, a return of the election expenses of any person who has been nominated as a candidate at that election is not lodged within the time and in the manner prescribed by or under the rules made in that behalf, or if any such return is lodged which is found, either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, neither the candidate nor his election agent shall be eligible for election for five years from the date of such election :

Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this rule may be removed by an order of the local Government in that behalf.

*Special Qualifications for Election in case of certain Constituencies.*

VI. [See Rule for each Province, for the Legislative Assembly, and the Council of State.]

### PART III

#### THE ELECTORAL ROLL

*General Conditions of Registration and Disqualifications.*

VII. (1) Every person shall be entitled to have his name registered on the electoral roll of a constituency who has the qualifications prescribed for an elector of that constituency, and who is not subject to any of the disqualifications hereinafter set out, namely :

- (a) is not a British subject ; or
- <sup>1</sup> (b) is a female ; or
- (c) has been adjudged by a competent court to be of unsound mind ; or
- (d) is under 21 <sup>2</sup> years of age :

Provided that the local Government may direct that, subject to such conditions as it may prescribe, a Ruler of any State in India or the Rulers of any such States or a subject of any such State or any class of such subjects shall not be disqualified for registration by reason only of not being a British subject or British subjects :

Provided further that, if a resolution is passed by the Council, after not less than one month's notice has been given of an intention to move such a resolution, recommending that the sex disqualification for registration should be removed either in respect of women generally or any class of women, the local Government shall make regulations providing that women or a class of women, as the case may be, shall not be disqualified for registration by reason only of their sex :

Provided further that no person shall be entitled to have his name registered on the electoral roll of more than one general constituency.

(2) If any person is convicted of an offence under Chapter IX-A, of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule IV, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of five years from the date of the conviction or of the report, as the case may be, or, if not on the electoral roll, shall not be so registered for a like period ; and if any person is reported by any such Commissioners as guilty of any other corrupt practice, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of three years from the date of the report or, if not on the electoral roll, shall not be so registered for a like period :

\* Provided that the local Government may direct that the name of any person to whom this sub-rule applies shall be registered on the electoral roll.

<sup>1</sup> (b) is omitted in the Burma Rules.

<sup>2</sup> 18 years in Burma.



*Qualifications of Electors.*

VIII. [See Rule for each Province, for the Legislative Assembly and Council of State.]

*Electoral Roll.*

IX. (1) An electoral roll shall be prepared for every constituency, on which shall be entered the names of all persons appearing to be entitled to be registered as electors for that constituency. It shall be published in the constituency together with a notice specifying the mode in which and the time within which any person whose name is not entered in the roll and who claims to have it inserted therein, or any person whose name is on the roll and who objects to the inclusion of his own name or of the name of any other person on the roll, may prefer a claim or objection to the Revising Authority.

(2) Subject to the provisions of these rules, the local Government shall make regulations providing for—

- (i) the authority by whom the electoral roll shall be prepared and the particulars to be contained in the roll ;
- (ii) the time at which the roll shall be prepared ;
- (iii) the publication of the roll in such manner and in such language as to give it wide publicity in the constituency to which it relates ;
- (iv) the mode in which and the time within which claims and objections may be preferred ;
- (v) the constitution and appointment of Revising Authorities to dispose of claims and objections ;
- (vi) the manner in which notices of claims or objections shall be published ;
- (vii) the place, date, and time at which and the manner in which claims or objections shall be heard :

and may make such regulations to provide for other matters incidental or ancillary to the preparation and revision of the roll as it may consider desirable. Such regulations may be made as to rolls generally or any class of rolls or any particular roll.

(3) The orders made by the Revising Authority shall be final, and the electoral roll shall be amended in accordance therewith and shall, as so amended, be republished in such manner as the local Government may prescribe.

(4) The electoral roll shall come into force from the date of such republication, and shall continue in force for a period of three years, after the expiration of which period a fresh roll shall be prepared in accordance with these rules.

Provided that the local Government may, by notification in the *Gazette*, direct the preparation in accordance with these rules of a fresh roll at any time before the expiration of the said period.

(5) If a constituency is called upon to elect a member or members after an electoral roll has ceased to have force and before the completion of the new electoral roll, the old electoral roll shall for the purposes of that election continue to operate as the electoral roll for the constituency.

(6) Notwithstanding anything hereinbefore contained, any person may apply to such authority as may be appointed in this behalf by the local Government for the amendment of any electoral roll for the time being in force, and the local Government may, at any time after any such application has been made in respect of an electoral roll, by notification in the *Gazette* direct the preparation of a list of amendments thereto, and all the provisions of this rule shall apply in the case of every such list in like manner as they apply in the case of electoral rolls : provided that, where any such application is made for the correction of an existing entry in the electoral roll and the said authority is satisfied after such inquiry as the local Government may by regulation prescribe that the entry

relates to the applicant and is erroneous or defective in any particular, he may amend the roll or cause it to be amended accordingly.

(7) When any list of amendments has been republished under sub-rule (6), the electoral roll to which it relates shall be deemed to have been amended accordingly.

Rule IX in Burma is as follows :

IX. (1) An electoral roll shall be prepared for every constituency, on which, subject to the provisions of rule VII, shall be entered the names of all persons who appear to be entitled to be registered as electors for that constituency by reason of possessing such qualification as is, in the case of that constituency, specified in Schedule II in respect of community and residence, and—

(a) assessment to income-tax, or

(b) entry in the capitation-tax assessment roll or in the thathameda-tax assessment roll.

(c) payment of a tax on circumstances and property under section 26 of the Burma Rural Self-Government Act, 1921, or

(d) payment of municipal or cantonment-taxes.

(2) The electoral roll as so prepared shall be published in the constituency together with a notice specifying the mode in which and the time within which any person whose name is not entered in the roll and who claims to have it inserted therein, whether by reason of any qualification referred to in sub-rule (1) or of any other qualification, or any person whose name is on the roll and who objects to the inclusion of his own name or of the name of any other person on the roll, may prefer a claim or objection to the Revising Authority.

[And thence onwards as in the rules for Indian Provinces, omitting, however, sub-rules (6) and (7).]

#### *Right to Vote.*

X. (1) Every person registered on the electoral roll for the time being in force for any constituency shall while so registered be entitled to vote at an election of a member or members for that constituency :

provided that—

(a) no person shall vote at any general election in more than one general constituency,<sup>1</sup> and

(b) no person shall vote at any election if he is subject to any disability stated in rule VII.

(2) If any person is in the course of the hearing of an election petition under these rules proved to have voted at the election in contravention of the proviso to sub-rule (1) his vote shall be void.

*Note.*—The Burma Rule omits proviso (b) and sub-rule (2).

## PART IV

### ELECTIONS

#### *Nomination of Candidates.*

*Note.*—The Burma Rules omit rules XII and XIII, and leave the procedure on nomination to be dealt with by regulations. The rules are reprinted below, p. 187.

XI. (1) Any person may be nominated as a candidate for election in any constituency for which he is eligible for election under these rules.

(2) The local Government shall appoint for each constituency—

(a) a date, not later than the fourteenth day after the date of the notification calling upon the constituency to elect a member, for the nomination of candidates ;

<sup>1</sup> In Bengal rule X (1) (a) the following words are added: 'or both in the Calcutta University and in the Dacca University Constituency'.

(b) a further date, not later than the seventh day after the first mentioned date, for the scrutiny of nominations ; and

(c) a further date or dates on which a poll shall, if necessary, be taken ; and the dates so appointed shall be notified in the constituency in such manner as the local Government thinks fit.

(3) On or before the date so appointed for the nomination of candidates, each candidate shall, either in person or by his proposer and seconder together, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Returning Officer or to such other person as may be authorized<sup>1</sup> in this behalf by regulation, a nomination paper completed in the form prescribed in Schedule II-A and subscribed by the candidate himself as assenting to the nomination and by two persons as proposer and seconder whose names are registered on the electoral roll of the constituency.

(4) Any person whose name is registered on the electoral roll of the constituency, and who is not subject to any disability stated in rule VII, may subscribe, as proposer or seconder, as many nomination papers as there are vacancies to be filled but no more.

(5) Every nomination paper delivered under sub-rule (3) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed or does thereby appoint as his election agent for the election either himself or some one other person who is not disqualified under these rules for the appointment and who shall be named in the declaration ; and no candidate shall be deemed to be duly nominated unless such declaration is delivered along with the nomination paper.

(6) Any nomination paper which is not received before three o'clock in the afternoon on the date appointed by the local Government for the nomination of candidates shall be rejected.

(7) The returning officer or other person authorized shall, on receiving a nomination paper under sub-rule (3), inform the person or persons delivering the same of the date, hour and place appointed for the scrutiny of nominations, and shall enter in the nomination paper its serial number and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him ; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder.

(8) Any candidate may withdraw his candidature by notice in writing subscribed by him and delivered to the returning officer, or other person authorized on or before three o'clock in the afternoon on the date succeeding that appointed by the local Government for the scrutiny of nominations. A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be re-nominated as a candidate for the same election.

(9) The returning officer or other person authorized shall, on receiving a notice of withdrawal under sub-rule (8), as soon as may be cause a notice of the withdrawal to be affixed in some conspicuous place in his office.

XII. (1) On or before the date appointed for the nomination of candidates, each candidate shall deposit or cause to be deposited with the returning officer the sum of five hundred rupees in cash or in Government Promissory Notes of equal value at the market rate of the day ; and no candidate shall be deemed to be duly nominated unless such deposit has been made.

(2) If a candidate by whom or on whose behalf the deposit referred to in sub-rule,

<sup>1</sup> See Rule XV (2), page 188 *infra*.

(1) has been made withdraws his candidature in the manner and within the time specified in sub-rule (8) of rule XI, or if the nomination of any such candidate is refused, the deposit shall be returned to the person by whom it was made; and if any candidate dies before the commencement of the poll, any such deposit, if made by him, shall be returned to his legal representative or, if not made by the candidate, shall be returned to the person by whom it was made.

(3) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is not elected and the number of votes polled by him does not exceed, in the case of a constituency returning one or two members, one-eighth of the total number of votes polled or, in the case of a constituency returning more than two members, one-eighth of the number of votes polled divided by the number of members to be elected, the deposit shall be forfeited to the Government.

(4) For the purpose of sub-rule (3), the number of votes polled shall be deemed to be the number of ballot papers, other than spoilt ballot papers, counted; and, where the election is held according to the system of proportional representation by means of the single transferable vote, the number of votes polled by a candidate shall be the number of votes polled by him as first preferences.

(5) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is elected and thereafter his seat is declared vacant under these rules owing to his failure to make the oath or affirmation hereinafter prescribed, the deposit shall be forfeited to the Government.

(6) The deposit made in respect of a candidate who is not elected shall, if it is not forfeited under sub-rule (3), be returned to the candidate or to the person who has made the deposit on his behalf, as the case may be, as soon as may be after the publication of the result of the election in the *Gazette*; and the deposit made in respect of a candidate who is elected shall, if it is not forfeited under sub-rule (5), be so returned as soon as may be after the candidate has made the oath or affirmation hereinafter prescribed.

Provided that, if a candidate is duly nominated at a general election in more than one constituency, not more than one of the deposits made by him or on his behalf shall be returned, and the remainder shall be forfeited to the Government.

XIII. If a candidate who has been duly nominated dies after the date appointed for the scrutiny of nominations and before the date appointed for the taking of a poll, the returning officer or other authorized person referred to in sub-rule (3) of rule XI shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the local Government, and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election:

Provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermanding of the poll.

#### *Procedure at Election.*

XIV. (1) If the number of candidates who are duly nominated and who have not withdrawn their candidature in the manner and within the time specified in sub-rule (8) of rule XI exceeds that of the vacancies, a poll shall be taken.

(2) If the number of such candidates is equal to the number of vacancies, all such candidates shall be declared to be duly elected.

(3) If the number of such candidates is less than the number of vacancies, all such candidates if any shall be declared to be elected, and the Governor shall, by a notification in the *Gazette*, call upon the constituency to elect a person or persons, as the case may be, within such time as may be prescribed by the notification: provided that where the constituency, having already been called upon under this sub-rule, has failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the Governor shall not be

bound to call again upon the constituency to elect a person or persons until such time, if any, as he thinks fit.

(4) Votes shall be given by ballot, and in general constituencies in person : provided that the local Government may—

- (a) in the case of any specified general constituency or of any specified part of any general constituency, or
- (b) in respect of any person attending at a polling-station in any constituency under the orders of, or under authority from, the returning officer of such constituency,

by regulation direct that votes may be given otherwise than in person : provided, further, that no votes shall be received by proxy.

*Note.*—In the Council of State rules, sub-rule (4) runs as follows :

Votes shall be given by ballot and no votes shall be received by proxy.

(5) <sup>1</sup> In plural-member constituencies every elector shall have as many votes as there are members to be elected : [but no elector shall give more than one vote to any one candidate].

<sup>2</sup> Provided that in the Presidency and Burdwan (European) constituency the election shall be made according to the principle of proportionate representation by means of the single transferable vote, and votes shall be given in accordance with regulations made in that behalf by the local Government.

(6) Votes shall be counted by, or under the supervision of, the returning officer, and each candidate, the election agent of each candidate, and one representative of each candidate authorized in writing by the candidate shall have a right to be present at the time of counting.

(7) When the counting of the votes has been completed, the returning officer shall forthwith declare the candidate or candidates, as the case may be, to whom the largest number of votes has been given, to be elected :

<sup>2</sup> Provided that in the Presidency and Burdwan (European) constituency the returning officer shall determine the candidates to whom the largest number of votes has been given in accordance with the regulations made in that behalf.

<sup>3</sup> Provided that, if  $\frac{\text{one or more seats are}}{\text{a seat is}}$  reserved, the returning officer shall first declare to be elected the  $\frac{\text{Non-Brahman}}{\text{Mahratta}}$  candidate (or candidates as the case may be) <sup>4</sup> to whom the largest number of votes has been given.

(8) Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, the determination of the person or persons to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the returning officer and in such manner as he may determine.

(9) The returning officer shall without delay report the result of the election to the Secretary to the Council, and the name or names of the candidate or candidates elected shall be published in the *Gazette*.

<sup>1</sup> This sub-rule is omitted in the Punjab and Bihar Rules.

In the Central Provinces Rules the words ' In the plural-member constituency ' are substituted for ' In plural-member constituencies '.

For the words in square brackets the following are substituted in the Bombay Rule, ' and shall be entitled to accumulate all of them upon one candidate or to distribute them amongst the candidates as he pleases.'

<sup>2</sup> In the Bengal Rule only.

<sup>3</sup> In the  $\frac{\text{Madras and}}{\text{Bombay}}$  Rule only.

<sup>4</sup> In the Madras Rule only.

*Note.*—Rules XI to XV are in Burma contained in rules XI, XII, and XIII, together with regulations made by the Local Government under rule XIII. The Burma Rules XI to XIII are as follows :

## PART IV

### ELECTIONS

#### *Nomination of Candidates.*

XI. (1) Any person may be nominated as a candidate for election in any constituency for which he is eligible for election under these rules.

(2) On or before the date on which a candidate is nominated the candidate shall make in writing and sign a declaration appointing either himself or some other person, who is not disqualified under these rules for the appointment, to be his election agent, and no candidate shall be deemed to be duly nominated unless such declaration has been made.

(3) A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be renominated as a candidate for the same election.

#### *Procedure at Election.*

XII. (1) If the number of candidates who are duly nominated and who have not withdrawn their candidature before such time as the local Government may, by regulation or otherwise, fix in this behalf exceeds that of the vacancies, a poll shall be taken.

(2) If the number of such candidates is equal to the number of vacancies, all such candidates shall be declared to be duly elected.

(3) If the number of such candidates is less than the number of vacancies, all such candidates shall be declared to be elected, and the Governor shall, by a notification in the Gazette, call upon the constituency to elect a member or members, as the case may be, within such time as may be prescribed by such notification.

(4) Votes shall be given by ballot and in general constituencies in person. No votes shall be received by proxy.

(5) In plural-member constituencies every elector shall have as many votes as there are members to be elected, and shall be entitled to accumulate all of them upon one candidate or to distribute them amongst the candidates as he pleases.

(6) Votes shall be counted by, or under the supervision of, the returning officer, and any candidate or, in the absence of the candidate, a representative duly authorized by him in writing shall have a right to be present at the time of counting.

(7) When the counting of the votes has been completed, the returning officer shall forthwith declare the candidate or candidates, as the case may be, to whom the largest number of votes has been given to be elected.

(8) Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, the determination of the person or persons to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the returning officer and in such manner as he may determine.

(9) The returning officer shall without delay report the result of the election to the Secretary to the Council, and the name or names of the candidate or candidates elected shall be published in the *Gazette*.

#### *Government to make Regulations regarding the Conduct of Election.*

XIII. (1) Subject to the provisions of these rules, the local Government shall make regulations providing—

- (1) for the form and manner in, and the conditions on, which nominations may be made, and for the scrutiny of nominations ;
- (2) for the appointment of a returning officer for each constituency and for his powers and duties ;
- (3) in the case of general constituencies, for the division of the constituencies into polling areas in such manner as to give all electors such reasonable facilities for voting as are practicable in the circumstances, and for the appointment of polling stations for these areas ;
- (4) for the appointment of officers to preside at polling stations, and for the duties of such officers ;
- (5) for the checking of voters by reference to the electoral roll ;
- (6) for the manner in which votes are to be given, whether by voting tokens or otherwise, and in particular for the case of illiterate voters or voters under physical or other disability ;

- (7) for the procedure to be followed in respect of tender of votes by persons representing themselves to be electors after other persons have voted as such electors ;
- (8) for the scrutiny of votes ;
- (9) for the safe custody of such returns, ballot papers, ballot boxes, voting tokens, and other election papers, as the local Government may direct to be preserved, for the period for which such boxes, tokens, and papers shall be preserved, and for the inspection and production of such papers ;

and may make such other regulations regarding the conduct of elections as it thinks fit.

(2) Notwithstanding anything in these rules, the local Government may for the first election under these rules, and shall, if thereafter a resolution in favour of the introduction of proportional representation is passed by the Council after not less than one month's notice has been given of an intention to move such a resolution, introduce, for any plural-member constituencies, the method of election by means of the single transferable vote, and make all necessary regulations for that purpose, and to that end may group together single-member constituencies so as to make new plural-member constituencies.

(3) In the exercise of the foregoing power, regulations may be made as to elections generally or any class of elections or in regard to constituencies generally or any class of constituencies or any particular constituency.

*Note.*—Rule XV corresponds to Burma Rule XIII. Thence onward the rules for Burma are (except where otherwise noted) the same as the Indian rules. The numbering of the latter is, however, two in advance of the Burma numbering, e. g. rule XXXI in India is the same as rule XXIX in Burma.

*Government to make Regulations regarding the Conduct of Elections.*

XV. (1) Subject to the provisions of these rules, the local Government shall make regulations providing :

- (i) for the scrutiny of nominations and, in particular, for the manner in which such scrutiny shall be conducted and for the conditions and circumstances in which any person may be present or may enter objections thereat ;
- (ii) for the appointment in each constituency of a returning officer and for his powers and duties, and for the performance by other persons of any power or duty of the returning officer.
- (iii) in the case of general constituencies, for the division of the constituencies into polling areas in such manner as to give all electors such reasonable facilities for voting as are practicable in the circumstances, and for the appointment of polling stations for these areas ;
- (iv) for the appointment of officers to preside at polling stations, and for the duties of such officers ;
- (v) for the checking of voters by reference to the electoral roll ;
- (vi) for the manner in which votes are to be given, and in particular for the case of illiterate voters, or voters under physical or other disability ;
- (vii) for the procedure to be followed in respect of tender of votes by persons representing themselves to be electors after other persons have voted as such electors ;
- (viii) for the scrutiny of votes ;
- (ix) for the safe custody of ballot papers and other election papers, for the period for which such papers shall be preserved, and for the inspection and production of such papers ;

and may make such other regulations regarding the conduct of elections as it thinks fit.

(2) Notwithstanding anything in these rules, if a resolution in favour of the introduction of proportional representation is passed by the Council, after not less than one month's notice has been given of an intention to move such a resolution, the local Government may for any plural-member constituencies, introduce the method of election by the single transferable vote, and may make all necessary regulations for the purpose, and to that end may group together single-member constituencies so as to make new plural-member constituencies.

(3) In the exercise of the powers conferred by this rule regulations may be made as to elections generally or any class of elections or in regard to constituencies generally or any class of constituency or any particular constituency.

*Multiple Elections.*

XVI. (1) If any person is elected by a constituency of the Council and by a constituency of either chamber of the Indian legislature, the election of such person to the Council shall be void, and the Governor shall call upon the constituency concerned to elect another person.

*Note.*—Sub-rule (1) is omitted in the Council of State and Legislative Assembly rules.

(2) If any person is elected [either] by more than one constituency of the Council [or by a constituency of the Council and a constituency of the Legislative Council of another Province], he shall, by notice in writing signed by him and delivered to the Secretary to the Council or the Secretaries to both Councils, as the case may be, within seven days from the date of the publication of the result of such election in the local official *Gazette*, choose for which of these constituencies he shall serve, and the choice shall be conclusive.

*Note.*—The words in square brackets do not appear in the Council of State and Legislative Assembly rules.

(3) When any such choice has been made, the Governor shall call upon the constituency or constituencies for which such person has not chosen to serve to elect another person or persons.

(4) If the candidate does not make the choice referred to in sub-rule (2) of this rule, the elections of such person shall be void, and the Governor shall call upon the constituency or constituencies concerned to elect another person or persons.

### ELECTION AGENTS AND RETURN OF EXPENSES

*Disqualification for being Election Agent.*

XVII. No person shall be appointed an election agent who is himself ineligible for election as being subject to any disqualification mentioned in sub-rule (3) or sub-rule (4) of rule V.

*Revocation of authority given to Election Agent.*

XVIII.—(1) The appointment of an election agent, whether the election agent be appointed by the candidate himself or not, may only be revoked in a writing signed by the candidate and lodged with the officer receiving nominations, and shall operate from the date on which it is so lodged.

(2) In the event of such a revocation, or of the death of any election agent, whether such event occurs before, during, or after the election, then the candidate shall appoint forthwith another election agent and declare his name in writing to the said officer.

*Return of Election Expenses.*

XIX.—(1) Within thirty-five days from the date of the publication of the result of an election under sub-rule (9) of rule XIV, there shall be lodged with the returning officer in respect of each person who has been nominated as a candidate for the election a return in such form as the local Government may by regulation <sup>1</sup> prescribe of the election expenses of such person containing the particulars specified in Schedule III, and signed both by the candidate and by his election agent.

<sup>1</sup> For the forms see Schedule III and Appendix II A, p. 325.



*Note.*—Burma rule XVII.—(1) Within one month or such longer period as the Governor may allow after the date of the publication of the result of the election under sub-rule (9) of rule XII, every candidate, either personally or through his election agent, shall lodge with the returning officer a return of his election expenses containing the particulars specified in Schedule III.

(2) Every such return shall contain a statement of all payments made by the candidate or by his election agent or by any persons on behalf of the candidate or in his interests for expenses incurred on account of, or in respect of the conduct and management of the election, and further a statement of all unpaid claims in respect of such expenses of which he or his election agent is aware.

(3) The return shall be accompanied by declarations by the candidate and his election agent which shall be in the form contained in Schedule III, and shall be made on oath or affirmation before a magistrate.

(4) Notwithstanding anything hereinbefore contained, where a candidate is, owing to absence from India, unable to sign the return of election expenses and to make the declaration within the period prescribed in this rule, the return shall be signed and lodged by the election agent only, and shall be accompanied by a declaration by the election agent under sub-rule (3), and within fourteen days after the return of the candidate to India he shall cause to be lodged with the returning officer a declaration made on oath or affirmation before a magistrate in the special form for the purpose contained in the said Schedule.

(5) When any return and the declarations made in respect thereof have been lodged with the returning officer, the returning officer shall, as soon as may be, cause a notice of the date on which the return and declarations in question have been lodged, and of the time and place at which they can be inspected, to be fixed in some conspicuous place in his office and to be published in the *Gazette*, and any person shall, on payment of a fee of one rupee, be entitled to inspect any such return or declaration and, on payment of such fee as the local Government may by regulation prescribe, to obtain a copy or copies thereof or of any part thereof.

*Note.*—Sub-rules (4) and (5) are omitted in the Burma Rules.

(6) The local Government shall cause to be prepared in such manner, and maintained for such time, as it may direct, a record showing the names of all candidates at every election under these rules, and the name of the election agent of each such candidate, and the date on which the return of election expenses of each candidate has been lodged with the returning officer.

*Power to Fix Maximum Scales of Expenditure and to Regulate Employment for Pay.*

XX.—(1) The Governor-General in Council may, by notification in the *Gazette*:

- (a) fix maximum scales of election expenses, which shall be applicable to any election held after the first elections under these rules; and
- (b) prescribe the numbers and descriptions of persons who may be employed for payment in connexion with any election held under these rules.

(2) Any notification issued under this rule may make different provisions for different constituencies.

*Accounts of Agents.*

XXI. Every election agent shall [for each election for which he is appointed an election agent] keep [separate and] regular books of account in which the particulars of all expenditure of the nature referred to in rule XIX shall be entered, whether such expenditure is incurred by the candidate or by the election agent or by any person under the direction of the candidate or the election agent.

*Note.*—The words in square brackets are omitted in the Burma rule XIX.

## PART V

## NOMINATED MEMBERS

*General Disqualifications for Nomination.*

XXII.—(1) No person shall be nominated to the Council who—

- (a) is not a British subject ; or
- (b) is a female ; or
- (c) has already made the oath or affirmation as a member of the Council or of any other legislative body constituted under the Act ; or
- (d) having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court ; or
- (e) has been adjudged by a competent court to be of unsound mind ; or
- (f) is under 25 years of age ; or
- (g) is an undischarged insolvent ; or
- (h) being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part :

Provided that the local Government may direct that, subject to such conditions as it may prescribe, a Ruler of any State in India or the Rulers of any such States or a subject of any such State or any class of such subjects shall not be disqualified for nomination by reason only of not being a British subject or British subjects :

Provided further that the disqualification mentioned in clause (d) may be removed by an order of the local Government in this behalf.

(2) A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for nomination for five years from the date of the expiration of the sentence.

(3) If any person is convicted of an offence under Chapter IX A of the Indian Penal Code, punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I, or in paragraphs 1, 2, or 3 of Part II of Schedule IV, such person shall not be eligible for nomination for five years from the date of such conviction or of the finding of the Commissioners, as the case may be : and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for three years from such date.

(4) If in respect of an election to any legislative body constituted under this Act a return of the election expenses of any person who has been nominated as a candidate at the election is not lodged within the time and in the manner prescribed by or under the rules made in that behalf, or if any such return is lodged which is found either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, neither the candidate nor his election agent shall be eligible for nomination for five years from the date of the election :

Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this rule may be removed by an order of the local Government in that behalf.

**In Burma :**

(4) If any person has been a candidate at an election to any legislative body constituted under the Act, and has failed to lodge in due time any prescribed return of election expenses or has lodged a return which is found, either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, such person shall not be eligible for nomination for five years from the date of the election.

*Terms of Office of Nominated Member.*

XXIII.—(1) A nominated non-official member shall hold office for the duration of the Council to which he is nominated.

(2) Official members shall hold office for the duration of the Council to which they are nominated or for such shorter period as the Governor may, at the time of nomination, determine.

## PART VI

## GENERAL PROVISIONS

## OBLIGATION TO TAKE OATH

*Taking of Oath.*

XXIV. Every person who is elected or nominated to be a member of the Council shall before taking his seat make, at a meeting of the Council, an oath or affirmation of his allegiance to the Crown in the following form, namely :

I, A. B., having been <sup>elected</sup>/<sub>nominated</sub> a member of this Council do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.

## VACATION OF SEAT

*Effect of Subsequent Disabilities or Failure to take Oath.*

XXV. If any person having been elected or nominated subsequently becomes subject to any of the disabilities stated in clauses (a), (c), (d), (e), (g), and (h) of sub-rule (1) or in sub-rules (2), (3), and (4) of rule V or of rule XXII, as the case may be, or fails to make the oath or affirmation prescribed by rule XXIV within such time as the Governor considers reasonable, the Governor shall, [if the disqualification has not been removed under these rules,] by notification in the *Gazette*, declare his seat to be vacant.

In Burma only :

(2) When any such declaration is made, the Governor shall, by notification as aforesaid, call upon the constituency concerned to elect another person within such time as may be prescribed by the notification, or shall nominate another person, as the case may be.

*Note.*—The words in square brackets do not appear in Burma rule XXIII. Nor is there in that rule any reference to clause (c) of sub-rule (1) of rule V.

*Casual Vacancies.*

XXVI.—(1) When a vacancy occurs in the case of an elected member by reason of his election being declared void [or his seat being declared vacant], or by reason of absence from India, inability to attend to duty, death, acceptance of office or resignation duly accepted, the Governor shall, by notification in the *Gazette*, call upon the constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by such notification.

(2) If a vacancy occurs in the case of a nominated member, the Governor shall nominate to the vacancy a person having the necessary qualification under these rules.

*Note.*—The words within square brackets do not appear in Burma rule XXIV.

## GENERAL ELECTIONS

*Reconstitution of Council.*

XXVII.—(1) On the expiration of the duration of a Council, or on its dissolution, a general election shall be held in order that a new Council may be constituted.

(2) On such expiration or dissolution, the Governor shall, by notification in the *Gazette*, call upon the constituencies referred to in rule IV to elect members in accordance with these rules within such time after the date of expiration or dissolution as may be prescribed by such notification :

Provided that, if the Governor thinks fit, such notification may be issued at any time, not being more than three months prior to the date on which the duration of the Council would expire in the ordinary course of events.

(3) Before the date fixed for the first meeting of the Council the Governor shall make such nominations as may be necessary to complete the Council.

*Publication of Result of General Election.*

XXVIII. As soon as may be after the expiration of the time fixed for the election of members at any general election, the names of the members elected for the various constituencies at such election shall be notified in the *Gazette*.

*Powers of local Government in case of difficulty.*

XXIX. If any difficulty arises as to the preparation or publication of any electoral roll or of any list of amendments to any such roll or as to the holding of any election under these rules, the local Government may by order do anything not inconsistent with these rules which appears to it to be necessary for the proper preparation or publication of the roll or for the proper holding of the election.

## PART VII

*The Final Decision of Doubts and Disputes as to the Validity of an Election.  
Definitions.*

XXX. In this Part and in Schedule IV, unless there is anything repugnant in the subject or context—

- (a) 'agent' includes an election agent and any person who is held by Commissioners to have acted as an agent in connexion with an election with the knowledge or consent of the candidate ;
- (b) 'candidate' means a person who has been nominated as a candidate at any election or who claims that he has been so nominated or that his nomination has been improperly refused, and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election ;
- (c) 'electoral right' means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election ; and
- (d) 'returned candidate' means a candidate whose name has been published under the rules as duly elected.

*The Election Petition.*

XXXI. No election shall be called in question, except by an election petition presented in accordance with the provisions of this Part.

*Presentation of the Petition.*

XXXII.—(1) An election petition against any returned candidate may be presented to the Governor—

- (a) by any candidate or elector within fourteen days from the date on which the return of the election expenses of the returned candidate and the declarations, referred to in rule XIX, are received by the returning officer; or
  - (b) within thirty days from that date by an officer empowered by the local Government in this behalf on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed; or
  - (c) on the ground that the returned candidate or his election agent or any other person acting with the connivance of the candidate or of his election agent has been guilty of the offences of bribery, undue influence or personation as defined in chapter IX A of the Indian Penal Code, in respect of the election, by any candidate or elector within fourteen days from the date on which such returned candidate, election agent, or other person is convicted of such offence.
- (2) An election petition shall be deemed to have been presented to the Governor when it is delivered to the Governor or to any officer appointed by him in this behalf—

- (a) by the person making the petition; or
- (b) by a person authorized in writing in this behalf by the person making the petition; or
- (c) by registered post.

(3) When the last day of the period for the presentation of an election petition under this rule is a public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881, or has been notified by the local Government of the province in which the petition is presented as a day to be observed as a holiday in Government offices, the petition shall be considered as having been received in due time if it is presented on the next succeeding day which is neither such a public holiday nor a day so notified.

(4) For the purposes of clause (a) of sub-rule (1), the date on which the return of the election expenses and the declarations referred to in rule XIX are received by the returning officer shall, in the case of a candidate who has made such return and declaration in the manner provided in sub-rule (4) of that rule, be deemed to be the date on which the declaration of the candidate under that sub-rule is received.

Burma rule XXX is as follows :

*Presentation of the Petition.*

XXX. An election petition against any returned candidate may be presented to the Governor—

- (a) by any candidate or elector within fourteen days from the date on which the result of the election has been published in accordance with sub-rule (9) of rule XII, or
- (b) within thirty days of such publication by an officer empowered by the local Government in this behalf, on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed.

*Contents of the Petition.*

XXXIII.—(1) The petition shall contain a statement in concise form of the material facts on which the petitioner relies <sup>[1]</sup> and the particulars of any corrupt

<sup>1</sup> In Burma only.

practice which he alleges], and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice.

(3) The Commissioners may upon such terms as to costs and otherwise as they may direct at any time allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in their opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

*Note.*—Sub-rules (2) and (3) are omitted from the Burma rules.

*Against whom it may be presented.*

XXXIV. The petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been duly elected; in which case he shall join as respondents to his petition all other candidates who were nominated at the election.

*Deposit of Security.*

XXXV. At the time of presentation of the petition, the petitioner shall, except where the petition is presented under clause (b) of sub-rule (1) of rule XXXII, deposit with it the sum of one thousand rupees in cash or in Government Promissory Notes of equal value at the market rate of the day as security for the cost of the same.

*Dismissal for Default.*

XXXVI.—(1) If the provisions of rule XXXII, rule XXXIII, or rule XXXV are not complied with, the Governor shall dismiss the petition.

*Note.*—In Burma rule XXXIV there is reference only to rule XXXIII, i.e. Indian rule XXXV.

(2) If the petition is not dismissed under sub-rule (1)—

*Appointment of Commissioners.*

(a) the Governor shall appoint as Commissioners for the trial of the petition three persons who are, or have been, or are eligible to be appointed, Judges of a High Court within the meaning of section 101 (3) of the Act, and shall appoint one of them to be the President, and thereafter all applications and proceedings in connexion therewith shall be dealt with and held by such Commissioners;

(b) the President of the Commission shall, as soon as may be, cause a copy of the petition to be served on each respondent and to be published in the *Gazette*, and may call on the petitioner to execute a bond in such amount and with such sureties as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined as a respondent on giving security in a like amount and procuring the execution of a like bond.

Provided that the execution of such a bond by the petitioner shall not be required in any case where the petition has been presented under clause (b) of sub-rule (1) of rule XXXII.

(3) When in respect of an election in a constituency more petitions than one are presented, the Governor shall refer all such petitions to the same Commissioners, who may at their discretion inquire into the petitions either in one or in more proceedings as they shall think fit.

(4) If the services of any Commissioner are not available for the purposes of the inquiry, or if, during the course of the inquiry, any Commissioner is unable to continue to attend the same, the Governor shall appoint another Commissioner, and the inquiry shall recommence before the Commission as so reconstituted: provided that the Commissioners may direct that any evidence already recorded may remain upon the record, in which case it shall not be necessary to re-examine those witnesses who have already been examined and discharged.

(5) Nothing in this rule shall be deemed to prevent the appointment of the President of a Commission before the other Commissioners are appointed, and if the President is so appointed, all references to the Commissioners in these rules shall, in respect of any matter which may be or is to be done before the commencement of the inquiry, be deemed to be references to the President.

*Note.*—Sub-rules (4) and (5) are omitted from the Burma rules.

#### *Inquiry by Commissioners.*

XXXVII. Subject to the other provisions of these rules every election petition shall be inquired into by the Commissioners, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits: provided that it shall only be necessary for the Commissioners to make a memorandum of the substance of the evidence of any witness examined by them.

#### *Place of Inquiry.*

XXXVIII. The inquiry shall be held at such place as the Governor may appoint: provided that the Commissioners may in their discretion sit at any other place in the  $\frac{\text{Presidency}^1}{\text{Province}^2}$  for any part of the inquiry, and may depute any one of their number to take evidence at any place in the  $\frac{\text{Presidency}^1}{\text{Province}^2}$ .

#### *Withdrawal of Petition.*

XXXIX.—(1) An election petition may be withdrawn only by leave of the Commissioners, or, if an application for withdrawal is made before any Commissioner has been appointed, of the Governor.

(2) If there are more petitioners than one, no application to withdraw a petition shall be made to the Commissioners except with the consent of all the petitioners.

(3) When an application for withdrawal is made to the Commissioners, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the *Gazette*.

(4) No application for withdrawal shall be granted if, in the opinion of the Governor or of the Commissioners, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.

(5) If the application is granted—

(a) the petitioner shall, where the application has been made to the Commissioners, be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the Commissioners may think fit;

<sup>1</sup> In the Madras, Bombay, and Bengal Rule.

<sup>2</sup> In the United Provinces, Punjab, Bihar, Central Provinces, and Assam Rule.

- (b) notice of the withdrawal shall be published in the *Gazette* by the Governor or by the Commissioners, as the case may be ;
- (c) any person who might himself have been a petitioner may, within fourteen<sup>1</sup> days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and, upon compliance with the conditions of rule XXXV as to security, shall be entitled to be so substituted, and to continue the proceedings upon such terms as the Commissioners may think fit.

Burma sub-rule (1) is as follows :—

XXXVII.—(1) No election petition shall, after Commissioners have been appointed to hold an inquiry thereon, be withdrawn without the leave of the Commissioners.

*Abatement or Substitution on Death of Petitioner.*

XL.—(1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

Provided that, where such sole petitioner was an officer empowered under clause (b) of sub-rule (1) of rule XXXII, the proceedings may be continued by any other officer empowered in this behalf by the local Government.

(2) Notice of the abatement of an election petition shall be published in the *Gazette* by the Commissioners, or, if the petition abates before any Commissioner has been appointed, by the Governor.

(3) Any person who might himself have been a petitioner may, within fourteen<sup>2</sup> days of such publication, apply to be substituted as petitioner, and, upon compliance with the conditions of rule XXXV as to security, shall be entitled to be so substituted, and to continue the proceedings upon such terms as the Commissioners may think fit.

*Abatement or Substitution on Death of Respondent.*

XLI. If before the conclusion of the trial of an election petition the respondent dies or gives notice that he does not intend to oppose the petition, the Commissioners shall cause notice of such event to be published in the *Gazette*, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted for such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the Commissioners may think fit.

*Recrimination when Seat Claimed.*

XLII.—(1) Where at an inquiry into an election petition any candidate other than the returned candidate, claims the seat for himself, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented complaining of his election.

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of the publication of the election petition under clause (b) of sub-rule (2) of rule XXXVI, given notice of his intention to the Commissioners and made the deposit and procured the execution of the bond referred to in rules XXXV and XXXVI respectively.

(2) Every notice referred to in sub-rule (1) shall be accompanied by the statement and list of particulars required by rule XXXIII in the case of an election petition, and shall be signed and verified in like manner.

*Note.*—Burma rule XL omits the proviso to sub-rule (1) and sub-rule (2).

<sup>1</sup> Burma rule XXXVII allows seven days.

<sup>2</sup> Burma rule XXXVIII allows seven days.



*Attendance of Law Officers.*

XLIII. When at an inquiry into an election petition the Commissioners so order, the Advocate-General or some person acting under his instructions shall attend and take such part therein as they may direct.

*Note.*—This rule is for Bengal, Bombay, and Madras.

In the case of Burma, the Central Provinces, Bihar and Orissa, Punjab, and the United Provinces, for 'Advocate General' read 'Government Advocate', and in case of Assam for the words 'the Advocate General . . . his instructions' read 'such officer as the local Government may from time to time appoint in this behalf'.

*Grounds for declaring Election void.*

XLIV. Save as hereinafter provided in this rule, if in the opinion of the Commissioners—

- (a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by a corrupt practice, or
- (b) any corrupt practice specified in Part I of Schedule IV has been committed, or
- (c) the result of the election has been materially affected by the improper acceptance or refusal of any nomination, or the improper reception or refusal of a vote, or the reception of any vote which is void, or any non-compliance with the provisions of the Act or the rules or regulations made thereunder, or by any mistake in the use of any form annexed thereto, or,

*Note.*—Burma rule XLIII reads 'by any irregularity in respect of a nomination paper' instead of 'by the improper acceptance or refusal of any nomination'.

(d) the election has not been a free election by reason of the large number of cases in which undue influence or bribery, within the meaning either of Part I or of Part II of Schedule IV has been exercised or committed, the election of the returned candidate shall be void.

(2) If the Commissioners report that a returned candidate has been guilty by an agent (other than his election agent) of any corrupt practice specified in Part I of Schedule IV which does not amount to any form of bribery other than treating as hereinafter explained or to the procuring or abetment of personation, and if the Commissioners further report that the candidate has satisfied them that—

- (a) no corrupt practice was committed at such election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent, and
  - (b) such candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at such election, and
  - (c) the corrupt practices mentioned in the said report were of a trivial, unimportant, and limited character, and
  - (d) in all other respects the election was free from any corrupt practice on the part of such candidate or any of his agents,
- then the Commissioners may find that the election of such candidate is not void.

*Explanation.*—For the purpose of this sub-rule 'treating' means the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment, or provision to any person with the object, directly or indirectly, of inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting.

*Report of Commissioners and Procedure thereon.*

XLV.—(1) At the conclusion of the inquiry, the Commissioners shall report whether the returned candidate or any other party to the petition who has under the provisions of these rules claimed the seat has been duly elected, and in so reporting shall have regard to the provisions of rule XLIV.

(2) The report shall further include a recommendation by the Commissioners as to the total amount of costs which are payable and the persons by and to whom such costs should be paid. Such recommendation may include a recommendation for the payment of costs to the Advocate-General or a person acting under his instructions, attending in pursuance of an order made under rule XLIII.

*Note.*—This sub-rule (2) is omitted from Burma rule XLIII.

(3) The report shall be in writing and shall be signed by all the Commissioners. The Commissioners shall forthwith forward their report to the Governor, who, on receipt thereof, shall issue orders in accordance with the report and publish the report in the *Gazette*, and the orders of the Governor shall be final.

*Form of Report.*

XLVI. If either in their report or upon any other matter there is a difference of opinion among the Commissioners, the opinion of the majority shall prevail, and their report shall be expressed in the terms of the views of the majority.

*Findings as to Corrupt Practices and Persons guilty thereof.*

XLVII. Where any charge is made in an election petition of any corrupt practice, the Commissioners shall record in their report—

- (a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent, or with the connivance of any candidate or his agent, and the nature of such corrupt practice, and
- (b) the names of all persons (if any) who have been proved at the inquiry to have been guilty of any corrupt practice, and the nature of such corrupt practice with any such recommendations as they may desire to make for the exemption of any such persons from any disqualifications they may have incurred in this connexion under the rules.

Provided that no person shall be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

*Note.*—This proviso does not appear in Burma rule XLV.

## PART VIII

## SPECIAL PROVISION

*Interpretation in Case of Doubt.*

XLVIII. If any question arises as to the interpretation of these rules otherwise than in connexion with an election inquiry held thereunder, the question shall be referred for the decision of the Governor, and his decision shall be final.

# SCHEDULES COMMON TO ALL PROVINCES

## SCHEDULE II A

(See Rule XI.)

*Form of Nomination Paper.*

### NOMINATION PAPER

Name of the Constituency for which the candidate  
is nominated . . . . .  
Name of candidate . . . . .  
Father's name . . . . .  
Age . . . . .  
Address . . . . .  
† Denomination (*state whether non-Muhammadan,  
Muhammadan, Sikh, Indian Christian, European  
or Anglo-Indian*) . . . . .  
Constituency on the electoral roll of which the  
candidate is registered as an elector . . . . .  
\* No. of the candidate in the electoral roll of the  
constituency in which he is registered as an  
elector . . . . .  
Name of proposer . . . . .  
\* No. of the proposer in the electoral roll of the  
constituency . . . . .  
Signature of the proposer . . . . .  
Name of the seconder . . . . .  
\* No. of the seconder in the electoral roll of the  
constituency . . . . .  
Signature of the seconder . . . . .

### *Declaration by Candidate.*

I hereby declare that I agree to this nomination.

Date..... Signature of Candidate.....

(*To be filled in by the Returning Officer or other authorized person.*)

### *Certificate of Delivery.*

*Serial Number*—This nomination paper was delivered to me at my office at  
(date and hour.....).

.....  
*Returning officer or other authorized person.*

### *Certificate of Scrutiny.*

I have scrutinized the eligibility of the candidate, the proposer and seconder,  
and find that they are respectively qualified to stand for election, to propose  
and to second the nomination.

.....  
*Returning Officer or other authorized person.*

(*N.B.*—This nomination paper will not be valid unless it is delivered to the returning  
officer, or other person authorized to receive it, at his office before 3 P.M. on .....  
192 .)

\* Where the electoral roll is sub-divided and separate serial numbers are assigned  
to the electors entered in each sub-division, a description of the sub-division in which  
the name of the person concerned is entered must also be given here.

† Not to be entered in the case of a special constituency.

(See Rule XIX.)

(Magistrate.)

*Form of Declaration by Candidate.*

I                    being a candidate for election in the                    constituency  
do hereby solemnly affirm that the above return of election expenses is true to  
the best of my knowledge and belief, and that, except the expenses herein set  
forth, no expenses of any nature whatsoever have to my knowledge or belief  
been incurred in, or for the purposes of, my candidature.

(Candidate.)

*Solemnly affirmed before me.*

(Magistrate.)

*Special form of Declaration by a Candidate under rule XIX, sub-rule (4).*

I, being a candidate for election in the constituency do hereby solemnly  
affirm that the return of election expenses signed by my election agent is (with  
the exceptions noted below) true to the best of my knowledge and belief, and that  
(with the exceptions noted below) no expenses of any nature whatsoever other  
than the expenses therein set forth have to my knowledge or belief been incurred  
in, or for the purposes of, my candidature.

*Particulars of Exceptions.*

.....

(Candidate.)

*Solemnly affirmed before me.*

(Magistrate.)

## SCHEDULE IV

(See Rules I, VII, XXII, XXXIII, XLIV, and XLVII.)

The following shall be deemed to be corrupt practices for the purposes of these  
rules :

## PART I

*Bribery.*

1. A gift, offer or promise by a candidate or his agent, or by any other person  
with the connivance of a candidate or his agent, of any gratifications to any person  
whomsoever, with the object, directly or indirectly, of inducing—

(a) a person to stand or not to stand as, or to withdraw from being, a candidate,  
or

(b) an elector to vote or refrain from voting at an election,  
or as a reward to—

(a) a person for having so stood or not stood or for having withdrawn his  
candidature, or

(b) an elector for having voted or refrained from voting.

*Explanation.*—For the purpose of this clause the term ‘gratification’ is not  
restricted to pecuniary gratifications or gratifications estimable in money, and  
includes all forms of entertainment and all forms of employment for reward ; but  
it does not include the payment of any expenses bona fide incurred at or for the  
purposes of any election and duly entered in the return of election expenses pre-  
scribed by these rules.

*Undue Influence.*

2. Any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or of any other person with the connivance of the candidate or his agent with the free exercise of any electoral right.

*Explanation.*— Without prejudice to the generality of the provisions of this clause, any such person as is referred to herein who—

(a) threatens any candidate or voter or any person in whom a candidate or voter is interested, with injury of any kind ; or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter within the meaning of this clause.

(2) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this clause.

*Personation.*

3. The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person, with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person who has voted once at an election for a voting paper in his own name at the same election.

*Publication of False Statements.*

4. The publication by a candidate or his agent, or by any other person, with the connivance of the candidate or his agent, of any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, which statement is reasonably calculated to prejudice the prospects of such candidate's election.

*Authorization of Expenditure.*

5. The incurring or authorizing by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent, in contravention of the provisions of any notification of the Governor-General in Council issued under Rule XX of these rules.

## PART II

*Acts under Part I.*

1. Any act specified in Part I, when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent.

*Personation.*

2. The application by a person at an election for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or for a voting paper in his own name after he has already voted at such election.

*Bribery.*

3. The receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person to stand or not to stand as, or to withdraw from being, a candidate ; or

- (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw his candidature.

*Payment for Conveyance.*

4. Any payment or promise of payment to any person whomsoever on account of the conveyance of any elector to or from any place for the purpose of recording his vote.

*Hiring and use of Public Conveyances.*

5. The hiring, employment, borrowing, or using for the purposes of the election of any boat, vehicle or animal usually kept for letting on hire or for the conveyance of passengers by hire :

Provided that any elector may hire any boat, vehicle or animal, or use any boat, vehicle or animal which is his own property, to convey himself to or from the place where the vote is recorded.

*Incurring Expense without Authority.*

6. The incurring or authorization of expenses by any person other than a candidate or his election agent on account of holding any public meeting or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, unless he is authorized in writing so to do by the candidate.

*Hiring of Liquor Shops.*

7. The hiring, using or letting, as a committee-room or for the purpose of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public.

*Issue of Circulars, &c. without Printer's and Publisher's Name printed thereon.*

8. The issuing of any circular, placard or poster having reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

## THE COUNCIL OF STATE RULES

### *Note.*

The General Rules for the Council of State and Schedules III and IV are identical with those for the Provincial Legislative Councils, except in the following cases :

- (i) Rules III, VI, and VIII differ in substance, and as applying to the Council of State are printed below.
- (ii) Rule XIV, which also varies in some respects is reprinted in full.

### *Composition of Council of State.*

III. The Council of State shall consist of—

- (1) thirty-three elected members, and
- (2) twenty-seven members nominated by the Governor-General, of whom not more than twenty may be officials, and one shall be a person nominated as the result of an election held in Berar.

### *Special Qualifications for Election in case of certain Constituencies.*

VI.—(1) No person shall be eligible for election as a Member of the Council of State to represent—

- (a) a general constituency situate in the United Provinces or in the province of Assam, unless his name is entered on the electoral roll of a general constituency situate within the same province ;
- (b) a general constituency situate in the province of Madras, Bombay, Bengal, the Punjab, or Bihar and Orissa, unless his name is entered on the electoral roll of the constituency, or of another constituency situate in the same province of the same communal description as that by which he desires to be elected ;
- (c) a general constituency situate in the Central Provinces or in the province of Burma, unless his name is entered on the electoral roll of the constituency.
- (2) No person shall be eligible for election as a Member of the Council of State to represent a special constituency unless his name is entered on the electoral roll of the constituency.
- (3) For the purpose of these rules—
  - (i) ‘ special constituency ’ means a European commerce constituency ;
  - (ii) ‘ general constituency ’ means any constituency specified in Schedule I, other than a European commerce constituency.

### *Qualifications of Electors.*

VIII.—(1) The qualifications of an elector for a general constituency shall be such qualifications based on—

- (i) residence, or residence and community, and
  - (ii)—(a) the holding of land, or
    - (b) assessment to or payment of income-tax, or
    - (c) past or present membership of a legislative body, or
    - (d) past or present tenure of office on a local authority, or
    - (e) past or present university distinction, or
    - (f) the tenure of office in a co-operative banking society, or
    - (g) the holding of a title conferred for literary merit,
- as are specified in Schedule II, in the case of that constituency.

(2) The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule II, in the case of that constituency.



*Election.*

XIV.—(1) If the number of candidates who are duly nominated and who have not withdrawn their candidature in the manner and within the time specified in sub-rule (8) of rule XI exceeds that of the vacancies, a poll shall be taken.

(2) If the number of such candidates is equal to the number of vacancies, all such candidates shall be declared to be duly elected.

(3) If the number of such candidates is less than the number of vacancies, all such candidates, if any, shall be declared to be elected, and the Governor-General shall, by a notification in the *Gazette* of India, call upon the constituency to elect a person or persons, as the case may be, within such time as may be prescribed by the notification: provided that where the constituency, having already been called upon under this sub-rule, has failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the Governor-General shall not be bound to call again upon the constituency to elect a person or persons until such time, if any, as he thinks fit.

(4) Votes shall be given by ballot, and in general constituencies in person: provided that the Governor-General in Council may—

(a) in the case of any specified general constituency or of any specified part of any general constituency, or

(b) in respect of any person attending at a polling station in any constituency under the orders of, or under authority from, the returning officer of such constituency,

by regulation direct that votes may be given otherwise than in person: provided, further, that no votes shall be received by proxy.

(5) In plural-member constituencies every elector shall have as many votes as there are members to be elected, but no elector shall give more than one vote to any one candidate except in the case of the Bombay (non-Muhammadan) constituency, in which constituency an elector may accumulate all his votes on any one candidate or may distribute them among the candidates as he pleases:

Provided that in the Madras (non-Muhammadan) constituency the election shall be made according to the principle of proportionate representation by means of the single transferable vote, and votes shall be given in accordance with regulations made in that behalf by the Governor-General in Council.

(6) Votes shall be counted by, or under the supervision of, the returning officer, and each candidate, the election agent of each candidate, and one representative of each candidate authorized in writing by the candidate shall have a right to be present at the time of counting.

(7) When the counting of the votes has been completed, the returning officer shall forthwith declare the candidate or candidates, as the case may be, to whom the largest number of votes has been given to be elected:

Provided that in the Madras (non-Muhammadan) constituency the returning officer shall determine the candidates to whom the largest number of votes has been given in accordance with the regulations made in that behalf.

(8) Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, the determination of the person or persons to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the returning officer and in such manner as he may determine.

(9) The returning officer shall without delay report the result of the election to the Secretary to the Government of India in the Legislative Department, and the name or names of the candidate or candidates elected shall be published in the *Gazette*.

## SCHEDULE I

(See Rule IV.)

## I.—LIST OF CONSTITUENCIES ENTITLED TO REPRESENTATION IN EVERY COUNCIL OF STATE

<i>Province.</i>	<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Madras . .	Madras (Non-Muham- madan)	Non-Muham- madan	The Madras Presidency	4
Ditto . .	Madras (Muhamma- dan)	Muhammadan	Ditto	1
Bombay . .	Bombay (Non-Mu- hammadan)	Non-Muham- madan	The Bombay Presidency, excluding Aden	3
Ditto . .	Bombay Presidency (Muhammadan)	Muhammadan	The Bombay Presidency, excluding Sind and Aden	1
Ditto . .	Sind (Muhammadan)	Ditto	The Province of Sind	1
Ditto . .	Bombay Chamber of Commerce	European Com- merce	(Non-territorial)	1
Bengal . .	East Bengal (Non- Muhammadan)	Non-Muham- madan	The Dacca, Rajshahi and Chittagong Divi- sions, excluding the Darjeeling District and the Chittagong Hill Tracts	1
Ditto . .	West Bengal (Non- Muhammadan)	Ditto	The Presidency and Burdwan Divisions	2
Ditto . .	East Bengal (Muham- madan)	Muhammadan	The Dacca, Rajshahi and Chittagong Divi- sions, excluding the Darjeeling District and the Chittagong Hill Tracts	1
Ditto . .	West Bengal (Mu- hammadan)	Ditto	The Presidency and Burdwan Divisions	1
Ditto . .	Bengal Chamber of Commerce	European Com- merce	(Non-territorial)	1
United Provinces	United Provinces Cen- tral (Non-Muham- madan)	Non-Muham- madan	The Lucknow and Fyza- bad Divisions	1
Ditto . .	United Provinces Northern (Non-Mu- hammadan)	Ditto	The Agra, Meerut, Ro- hilkhand and Kumaon Divisions	1
Ditto . .	United Provinces Southern (Non-Mu- hammadan)	Ditto	The Allahabad, Jhansi, Gorakhpur and Be- nares Divisions	1
Ditto . .	United Provinces West (Muhamma- dan)	Muhammadan	The Allahabad, Jhansi, Agra, Rohilkhand, Meerut, and Kumaun Divisions	1
Ditto . .	United Provinces East (Muhamma- dan)	Ditto	The Lucknow, Fyzabad, Benares, and Gorakh- pur Divisions	1
Punjab . .	Punjab (Non-Muham- madan)	Non-Muham- madan	The Punjab	1
Ditto . .	Punjab (Sikh)	Sikh	Ditto	1
Bihar and Orissa	Bihar and Orissa (Non-Muhammadan)	Non-Muham- madan	The Province of Bihar and Orissa	2 <sup>1</sup>

<sup>1</sup> The Bihar and Orissa (non-Muhammadan) constituency is entitled to elect a third member to the second, fourth, and succeeding alternate Councils of State under Part II of this Schedule.

<i>Province.</i>	<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>
Bihar and Orissa Central Provinces	Bihar and Orissa (Muhammadian) Central Provinces	Muhammadian	The Province of Bihar and Orissa	1
		General	The Central Provinces, excluding : (a) the zamindari and jagirdari estates specified in Part VI of the First Schedule to the Scheduled Districts Act, 1874 ; (b) the following zamindaries of the Chhat-tisgarh Division, namely, Kanteli, Bhatgaon, Bilagarh-Katgi, Parpori, Khujji, Deori, Suarmar, Naira and Kauria ; (c) the Sironcha Tahsil of the Chanda District ; and (d) the Mandla District, except the Mandla Municipality.	1
Burma . .	Burma	General	The Province of Burma	1
Ditto . .	Burma Chamber of Commerce	European Commerce	(Non-territorial)	1

II. (1)—LIST OF CONSTITUENCIES ENTITLED TO REPRESENTATION  
IN ROTATION

<i>Province.</i>	<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>
Punjab . .	East Punjab (Muhammadian)	Muhammadian	The Ambala, Jullundur and Lahore Divisions	2
Ditto . .	West Punjab (Muhammadian)	Ditto	The Rawal Pindi and Multan Divisions	
Bihar and Orissa	Bihar and Orissa (Non-Muhammadian)	Non-Muhammadian	The Province of Bihar and Orissa	1
Assam . .	Assam (Non-Muhammadian)	Ditto	The Province of Assam	
Ditto . .	Assam (Muhammadian)	Muhammadian	Ditto	

II.—In the case where two constituencies are bracketed together as entitled to elect one member, the constituency first mentioned shall elect to the first Council of State at the general election and at all by-elections so long as the first Council of State continues, and the second-mentioned constituency shall elect at the general election to the next Council of State and at all by-elections in like manner, and thereafter the constituencies shall elect in like manner in rotation to succeeding Councils of State.

III.—In the case where three constituencies are bracketed together as entitled to elect two members, the two first-mentioned constituencies shall each elect a member to the first Council of State at the general election and the constituency affected shall elect at any by-election so long as the first Council of State continues, and for the purposes of the general election to the second Council of State and by-elections occurring during the continuance of that Council the two first-

mentioned constituencies shall be deemed to be one constituency and the members shall be elected, one by those constituencies combined, and the other by the third-mentioned constituency, or, in the case of a by-election, by those constituencies or that constituency, as the case may be, and thereafter the constituencies shall elect in like manner in rotation to succeeding Councils of State.

## COUNCIL OF STATE.—SCHEDULE II

(See Rule VIII.)

### QUALIFICATIONS OF ELECTORS

#### PART I.—MADRAS

##### *Definition.*

1. For the purposes of this Part—

- (a) 'previous year' means the financial year preceding that in which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules.
- (b) 'estate' means—
  - (1) any permanently settled estate or temporarily settled Zamindari;
  - (2) any portion of such permanently settled estate or temporarily settled Zamindari which is separately registered in the office of the collector;
  - (3) any unsettled Palaiyam or Jagir;
  - (4) any Inam village of which the grant has been confirmed or recognized by the British Government or any separated part of such village.
  - (5) any portion, consisting of one or more villages, of any of the estates specified above in clause (1), (2) and (3), which is held on a permanent under-tenure.

##### *Entry of Name in Land Register.*

2. Save as expressly provided in this Part, no person claiming to be registered on account of the possession of income derived from land for which a public register is kept shall be entitled to have such income taken into account in determining his eligibility, unless the land from which the income is derived stands registered in such register in his name.

##### *Joint Holders.*

3. If several persons are registered as joint holders of land, a majority of the adult male persons so registered may nominate in writing any one of themselves who is not disqualified to be their representative for voting purposes, and the name of such representative alone shall be entered in the electoral roll and, if such nomination is not made, no entry shall be made in the roll in respect of such land.

*Explanation.*—Land registered under section 14 of the Malabar Land Registration Act, 1895, in the joint names of the registered proprietor and another person is not land registered in the names of joint holders within the meaning of this paragraph.

##### *Family Property entered in the Name of a Woman.*

4. Where the property of a tarwad or similar joint family under the Marumakkattayam law is registered in the name of a woman and would, but for the disqualification of sex, qualify the registered holder as an elector, the senior male member of the family who is not disqualified or any member not disqualified who is nominated in writing by a majority of the adult male members, shall be entered in the electoral roll as the representative of the family.

*Fiduciary Capacity.*

5. Save as hereinbefore provided, no person shall be entitled to have his name entered in an electoral roll unless he possesses the prescribed property qualification in his own personal right and not in a fiduciary capacity.

*Annual Income*

6. For the purposes of this Part, the annual income derived from an estate shall be taken to be the annual rent value upon which the land cess is calculated under the Madras Local Boards Act, 1920, excluding the jodi, quit-rent, peshkask, or similar charge payable to Government.

*Calculation of Annual Income and Assessment.*

7. In calculating annual income and assessment for the purposes of this Part—
- (a) income derived from an estate shall not be reckoned along with income from any land other than an estate, but it may be reckoned along with a malikana allowance ;
  - (b) in no case shall income derived from a portion of an estate which is not separately registered in the office of a Collector be taken into account ;
  - (c) the assessment on inam lands shall be taken to be the full assessment which such lands would bear if they were not inam ;
  - (d) assessments paid on more than one parcel of land may be reckoned together : provided that, in the case of land referred to in paragraphs 3 and 4 of this Part, the assessment paid thereon shall not be added to any assessment paid on other land, unless the holder of the latter has been nominated, or is entitled, under those paragraphs, to represent the joint holders or family in respect of the former land.

*Basis of Determination of Annual Rent Value and Assessment.*

8. For the purposes of this Part, the annual rent value and assessment shall be determined with reference to the accounts of the *fasli* year preceding the calendar year in which the roll is finally published ; or, if the accounts for that year are not available, then with reference to the latest accounts that are available, provided that, if in any case it is not possible to calculate the rent value in accordance with the provisions of paragraph 7 of this Part, the Collector shall determine the value for the purposes of this Part upon the best information available.

*Non-Muhammadan and Muhammadan Constituencies.*

9. A person shall be qualified as an elector for a general constituency who has resided in the Presidency of Madras for not less than 120 days in the previous year and who—

- (a) holds in the presidency an estate of which the annual income is not less than Rs.3,000 ; or
- (b) is registered as a pattadar or inamdar of land in the presidency on which the assessment, including the water rate, is not less than Rs.1,500 ; or
- (c) receives from Government a malikana allowance the annual amount of which is not less than Rs.3,000 ; or
- (d) was in the previous year assessed on his own account to income tax on a total income as computed under section 16 of the Indian Income Tax Act, 1922, of not less than Rs.20,000 ; or
- (e) is or has been a non-official member of either chamber of the Indian Legislature or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Madras Legislative Council ; or

- (f) is or has been the non-official president of the Madras Municipal Council or of a district board or taluk board constituted under the Madras Local Boards Act, 1884, or the Madras Local Boards Act, 1920, or is the non-official vice-president of the said Council or of a district board ; or
- (g) is or has been the non-official chairman or is the non-official vice-chairman of a municipal council constituted under the Madras District Municipalities Act, 1884, or the Madras District Municipalities Act, 1920 ; or
- (h) is or has been a member of the Senate or a Fellow or an Honorary Fellow of any University constituted by law in British India ; or
- (i) is the non-official president or vice-president of any central bank or banking union which is a registered society within the meaning of section 2 of the Co-operative Societies Act, 1912 ; or
- (j) is recognized by the Government as the holder of the title of Shams-ul-Ulama or of the title of Mahamahopadhyaya :

Provided that—

- (i) no other person other than a Muhammadan shall be qualified as an elector for the Muhammadan constituency, and
- (ii) no Muhammadan shall be qualified as an elector for the non-Muhammadan constituency.

## PART II.—BOMBAY

### *Joint Families.*

1. Where any property is held or payment is made or received jointly by the members of a joint family, the family shall be adopted as a unit for deciding whether under the provisions of this Part the requisite qualification exists ; and, if it does exist, the manager of the family only shall be qualified as an elector in respect of such property or payment.

### *General Constituencies.*

2. A person shall be qualified as an elector for a general constituency who has a place of residence in the constituency and who—

- (a) is in Sind either a Jagirdar of the first or second class or a Zamindar who, in each of the three revenue years preceding that in which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules has paid not less than Rs. 2,000 land revenue on land situated in any district in Sind ; or
- (b) is a Deccan Sardar or Gujarat Sardar, that is to say, a person whose name is entered in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 2363, dated the 23rd July 1867, or in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 6265, dated the 21st September 1909 ; or
- (c) is a sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village assessed to land revenue of not less than Rs. 2,000, or a Talukdar holding on Talukdari tenure land assessed at not less than Rs. 2,000 land revenue, or a co-sharer holding on Talukdari tenure a share in any land, which share, if held separately, would be assessed at not less than Rs. 2,000 land revenue, or a Khot responsible for the payment of land revenue in respect of an entire village assessed at not less than Rs. 2,000 land revenue, or
- (d) is a holder of land assessed or assessable to land revenue of not less than Rs. 2,000 ;

- (e) was in the financial year preceding that in which the electoral roll or the list of amendments thereto as the case may be for the time being under preparation is first published under these rules assessed to income tax on an income of not less than Rs. 30,000 ; or
- (f) is or has been a non-official member of either chamber of the Indian Legislature or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Bombay Legislative Council ; or
- (g) is or has been the President of the Municipal Corporation of the City of Bombay, or is or has been the non-official president or is the non-official vice-president of a city municipality within the meaning of section 3 (1) of the Bombay District Municipal Act, 1901, or of a district local board established under the Bombay Local Boards Act, 1884 ; or
- (h) is or has been a member of the Senate or a Fellow or Honorary Fellow of any University constituted by law in British India ; or
- (i) is recognized by the Government as a holder of the title of Shams-ul-Ulama or of the title of Mahamahopadhyaya :

Provided that—

- (i) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and
- (ii) no Muhammadan shall be qualified as an elector for the non-Muhammadan constituency.

#### SPECIAL CONSTITUENCY

##### *Bombay Chamber of Commerce Constituency.*

3. A person shall be qualified as an elector for the Bombay Chamber of Commerce constituency who is a member of that Chamber and has a place of residence in India.

4. For the purpose of this Part, a person shall be deemed to have a place of residence in a constituency, if he—

- (a) ordinarily lives in the constituency ; or
- (b) has his family dwelling-house in the constituency and occasionally occupies it ; or
- (c) maintains in the constituency a dwelling-house ready for occupation in charge of servants, and occasionally occupies it.

### PART III.—BENGAL

#### *Definition.*

1. For the purposes of this Part—

- (1) 'previous year' means the financial year preceding that in which the electoral roll for the time being under preparation is first published under these rules.
- (2) A person shall be deemed to have a place of residence within the limits of a constituency or of India, as the case may be, if he—
  - (i) ordinarily lives within those limits ; or
  - (ii) has his family dwelling-house within those limits and occasionally occupies it ; or
  - (iii) maintains within those limits a dwelling-house ready for occupation in charge of servants, and occasionally occupies it.

#### *Joint Families.*

2. Where property is held or payments are made jointly by the members of a joint family, the family shall be adopted as the unit for deciding whether under

this Part the requisite qualification exists; and, if it does exist, the person qualified shall be the manager of the family.

*Determination of Qualification.*

3. In determining any claim to a qualification by a person by virtue of the payment of land revenue or road and public works cesses—

- (a) only such estates and shares of estates and only such permanent tenures and shares of permanent tenures as are not within the district of Darjeeling or the Chittagong Hill Tracts shall be taken into account;
- (b) only such estates and shares of estates as are held by him in his own right and not in a fiduciary capacity and are registered in his own name in the registers maintained under the Land Registration Act, 1876, shall be taken into account;
- (c) only such permanent tenures and shares of permanent tenures as are held by him in his own right and not in a fiduciary capacity shall be taken into account;
- (d) only such land revenue or road and public works cesses as is payable in respect of his own personal share shall be taken into account;
- (e) if the amount of land revenue or road and public works cesses paid in respect of any share of an estate or permanent tenure is not definitely known, the District Officer of the district in which such estate or tenure is situated shall estimate the amount paid in respect of such share, and his decision shall be final.

*Explanation.*—For the purposes of this paragraph a *mutwalli* or manager of a *wakf* estate shall be deemed to hold such estate in his own right, but a trustee or manager of an estate other than a *wakf* estate shall not be so deemed.

GENERAL CONSTITUENCIES

*Non-Muhammadan Constituencies.*

4. A person shall be qualified as an elector for a non-Muhammadan constituency who is neither a Muhammadan nor a European and who has a place of residence within the constituency, and who—

- (a)—(i) in the Burdwan Division or Presidency Division, held during the previous year in his own right as a proprietor one or more estates or shares of estates and paid in respect thereof land revenue amounting to not less than Rs. 7,500, or road and public works cesses amounting to not less than Rs. 1,875; or
- (ii) in the Dacca, the Rajshahi, or the Chittagong Division held during the previous year in his own right as a proprietor one or more estates or shares of estates, or one or more permanent tenures or shares of such tenures held direct from such proprietor, and paid in respect thereof land revenue amounting to not less than Rs. 5,000 or road and public works cesses amounting to not less than Rs. 1,250; or
- (b) (i) was during the previous year assessed to income tax on an income of not less than Rs. 12,000, or
- (ii) is a member of a firm which in the previous year was assessed to income tax, and whose share of the firm's income, on which income tax was so assessed, is certified by an Income-tax Officer in a certificate, specifying the names and the shares of the partners of the firm, to have been not less than Rs. 12,000; or
- (c) is or has been a non-official member of either chamber of the Indian Legislature or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Bengal Legislative Council; or



- (d) is or has been the non-official chairman or is the non-official vice-chairman or deputy-chairman of the Corporation of Calcutta, or is or has been the non-official chairman or is the non-official vice-chairman of a municipality constituted under the Bengal Municipal Act, 1884, or of a district board established under the Bengal Local Self-Government Act, 1885 ; or
- (e) is or has been a member of the Senate or a Fellow or an Honorary Fellow of any University constituted by law in British India ; or
- (f) is the non-official chairman, deputy chairman or vice-chairman of any co-operative central bank or union or provincial co-operative federation, which is a registered society within the meaning of section 2 of the Co-operative Societies Act, 1912 ; or
- (g) is recognized by Government as the holder of the title of Mahamahopadhyaya.

*Muhammadan Constituencies.*

5. A person shall be qualified as an elector for a Muhammadan constituency who is a Muhammadan and has a place of residence within the constituency and who—

- (a) held during the previous year in his own right as a proprietor or a permanent tenure-holder one or more estates or shares of estates or one or more permanent tenures or shares of such tenures held direct from such proprietor and paid in respect thereof land revenue amounting to not less than Rs. 600 or road and public works cesses amounting to not less than Rs. 125 ; or
- (b) (i) was during the previous year assessed to income tax on an income of not less than Rs. 6,000 ; or
- (ii) is a member of a firm which in the previous year was assessed to income tax, and whose share of the firm's income, on which income tax was so assessed, is certified by an Income-tax Officer in a certificate, specifying the names and shares of the partners of the firm, to have been not less than Rs. 6,000 ; or
- (c) has any of the qualifications specified in clauses (c), (d), (e), (f) and paragraph 4 of this Part, or
- (d) is recognized by the Government as the holder of the title of Shams-ul-Ulama.

SPECIAL CONSTITUENCY

*The Chamber of Commerce Constituency.*

6. A person shall be qualified as an elector for the Bengal Chamber of Commerce constituency who has a place of residence in India and is a Chamber member of that Chamber or a person entitled to exercise the rights and privileges of Chamber-membership on behalf of and in the name of any firm, company or other corporation.

## PART IV.—THE UNITED PROVINCES

*Definition.*

1. For the purposes of this Part—

‘owner’ does not include a mortgagee, trustee or a lessee.

*Joint Families.*

2.—(1) Where property is held or payments are made jointly by the members of a joint family, the family shall be adopted as the unit for deciding whether under this Part the requisite qualification exists ; and, if it does exist, the vote shall be exercised by the member authorized in that behalf by a majority of the family, or, in the case of a Hindu joint family, by a member so authorized or by the manager thereof.

(2) A person may be qualified either in his personal capacity or in the capacity of a representative of a joint family, but not in both capacities.

*Non-Muhammadan and Muhammadan Constituencies.*

3. A person shall be qualified as an elector for a general constituency who has a place of residence in the constituency and who—

- (a) is the owner of land in the constituency in respect of which land revenue amounting to not less than Rs. 5,000 per annum is payable; or
- (b) is the owner of land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than Rs. 5,000 per annum; or
- (c) was in the financial year preceding that in which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules, assessed to income tax on an income of not less than Rs. 10,000; or
- (d) is or has been a non-official member of either chamber of the Indian Legislature or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the United Provinces Legislative Council; or
- (e) is or has been the non-official chairman or is the non-official vice-chairman of a municipal board constituted under the United Provinces Municipalities Act, 1916, or of a district board constituted under the United Provinces District Boards Act, 1906; or
- (f) is or has been a member of the Senate or a Fellow or Honorary Fellow of any University constituted by law in British India; or
- (g) is or has been the president of a Chamber of Commerce in the United Provinces; or
- (h) is the non-official president or vice-president of a co-operative central society, which is a registered society within the meaning of section 2 of the Co-operative Societies Act, 1912; or
- (i) is recognized by the Government as the holder of the title of Shams-ul-Ulama or of the title of Mahamahopadhyaya:

Provided that—

- (i) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency; and
- (ii) no Muhammadan shall be qualified as an elector for a non-Muhammadan constituency.

A person shall be deemed to have a place of residence in a constituency if he—

- (a) ordinarily lives in the constituency, or
- (b) has his family dwelling-house in the constituency and occasionally occupies it, or
- (c) maintains in the constituency a dwelling-house ready for occupation in charge of servants, and occasionally occupies it.

## PART V.—THE PUNJAB

### *Definitions.*

1. For the purposes of this Part—

- (a) 'date of publication of the electoral roll' means the date on which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules:

- (b) 'land revenue' means land revenue as defined in section 3 (6) of the Punjab Land Revenue Act, 1887, and, in the case of fluctuating land revenue or land revenue assessed on lands subject to river action, the average amount of such land revenue paid during the three years preceding the date of publication of the electoral roll ;
- (c) 'owner' does not include a mortgagee ;
- (d) 'the land records' means an attested record of rights or an attested annual record of rights maintained under Chapter IV of the Punjab Land Revenue Act, 1887, and includes an order finally sanctioning a mutation duly passed under that chapter.

*Residence.*

2. For the purposes of this Part, a person shall be deemed to have a place or residence in a constituency, if he—

- (a) ordinarily lives in the constituency, or
- (b) has his family dwelling-house in the constituency, and occasionally occupies it, or
- (c) maintains in the constituency a dwelling-house ready for occupation in charge of servants, and occasionally occupies it.

*Land Records, &c., to be Conclusive Evidence.*

3. For the purposes of determining any claim to a qualification under this Part, any entry in the land records shall be conclusive evidence of the facts stated therein.

*Co-Shares.*

4. Where two or more persons are co-sharers in land assessed to land revenue, or in a tenancy or lease of land assessed to land revenue, or in the receipt of assigned land revenue, every such person shall be qualified as an elector who would be so qualified if his share in such land tenancy, lease or assignment were held separately.

*Explanation.*—For the purpose of this paragraph the share of any such person who is under twenty-one years of age shall be deemed to be the share of his father or, if his father is dead, of his eldest brother, provided that his father or eldest brother, as the case may be, is a co-sharer with him in the property.

GENERAL CONSTITUENCIES

*Non-Muhammadan, Muhammadan and Sikh Constituencies.*

5. A person shall be qualified as an elector for a general constituency who resides in the constituency and who—

- (a) is the owner or Crown tenant of land assessed to land revenue of not less than Rs. 750 per annum ; or
- (b) is an assignee of land revenue amounting to not less than Rs. 750 per annum ; or
- (c) was in the financial year preceding the date of publication of the electoral roll assessed to income tax on an income of not less than Rs. 15,000 ; or
- (d) is or has been a non-official member of either chamber of the Indian Legislature or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Punjab Legislative Council ; or
- (e) is a provincial Punjab Darbari ; or
- (f) is or has been the non-official president or vice-president of any municipal committee established under the Punjab Municipal Act, 1911, which has a population of 20,000 or over or which is situate at the head-quarters' station of a district, or is or has been the non-official chairman

or vice-chairman of a district board established under the Punjab District Boards Act, 1883; or

- (g) is or has been a member of the Senate, or a Fellow or an Honorary Fellow, of any University constituted by law in British India; or
- (h) is the non-official president or vice-president of any central co-operative bank or union which is a registered society within the meaning of section 2 of the Co-operative Societies Act, 1912; or
- (i) is recognized by Government as the holder of the title of Shams-ul-Ulama or of the title of Mahamahopadhyaya:

Provided that—

(i) no person shall be qualified as an elector for a Muhammadan constituency who is not a Muhammadan or for the Sikh constituency who is not a Sikh, and

(ii) no Muhammadan or Sikh shall be qualified as an elector for the non-Muhammadan constituency.

*Explanation.*—If any question arises as to whether any person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh according as he makes, or refuses to make, in such form and manner as the local Government may by regulation prescribe, a declaration that he is a Sikh.

## PART VI.—BIHAR AND ORISSA

### *Definition.*

1. For the purposes of this Part—

‘previous year’ means the financial year preceding that in which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules.

### *Joint Families.*

2. Where property is held or payments are made jointly by the members of a joint family, the family shall be adopted as the unit for deciding whether under this Part the requisite qualification exists; and, if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorized in their behalf by the family concerned.

### *Place of Residence.*

3. A person shall be deemed to have a place of residence within the province of Bihar and Orissa if he—

- (a) ordinarily lives within the province, or
- (b) has within the province his family dwelling-house and occasionally occupies it, or
- (c) maintains within the province a dwelling-house ready for occupation in charge of servants and occasionally occupies it.

### *Non-Muhammadan Constituency.*

4. A person shall be qualified as an elector for the non-Muhammadan constituency who is not a Muhammadan and who has a place of residence in the province of Bihar and Orissa and who—

- (a) holds, in his own right and not in a fiduciary capacity, an estate or estates or a portion of an estate or portions of estates for which a separate account or accounts (including a residuary account) is or have been opened, for which land, whether revenue-paying or revenue-free or rent-free land, an aggregate amount of not less than Rs. 1,200 land revenue or an aggregate amount of not less than Rs. 300 local cess is payable per annum; or

- (b) holds, in his own right and not in a fiduciary capacity, a tenure or tenures for which an aggregate amount of not less than Rs. 300 local cess is payable per annum either directly to Government or through a superior landlord ; or
- (c) was during the previous year assessed on his own account to income tax on an income of not less than Rs. 12,800 ; or
- (d) is or has been a non-official member of either chamber of the Indian Legislature or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Bihar and Orissa Legislative Council ; or
- (e) is or has been the chairman or is the vice-chairman of a municipality constituted in the Province of Bihar and Orissa, under the Bengal Municipal Act, 1884, or of a district board constituted in the Province under the Bengal Local Self-Government Act, 1885, or of a district committee in the Province under the Cess Act, 1880, or is or has been the President or is the Vice-President of a municipal committee, constituted in the Province under the Central Provinces Municipal Act, 1903, or is or has been the chairman of a district council constituted in the Province under the Central Provinces Local Self-Government Act, 1883 ; or
- (f) is or has been a member of the Senate or a Fellow or an Honorary Fellow of any University constituted by law in British India ; or
- (g) is recognized by the Government as the holder of the title of Mahamahopadhyaya.

*Muhammadan Constituency.*

5. A person shall be qualified as an elector for the Muhammadan constituency who is a Muhammadan and has a place of residence in the province of Bihar and Orissa and who—

- (a) holds, in his own right and not in a fiduciary capacity, an estate or estates or a portion of an estate or portions of estates for which a separate account or accounts (including a residuary account) is or have been opened, for which land, whether revenue-paying or revenue-free or rent-free land, an aggregate amount of not less than Rs. 750, land revenue or an aggregate amount of not less than Rs. 187-8-0 local cess is payable per annum ; or
- (b) holds, in his own right and not in a fiduciary capacity, a tenure or tenures for which an aggregate amount of not less than Rs. 187-8 local cess is payable per annum either directly to Government or through a superior landlord ; or
- (c) was during the previous year assessed on his own account to income tax on an income of not less than Rs. 6,400 ; or
- (d) has any of the qualifications specified in clauses (d), (e), and (f), and paragraph 4 of this Part ; or
- (e) is recognized by the Government as the holder of the title of Shams-ul-Ulama.

## PART VII.—THE CENTRAL PROVINCES

*Place of Residence.*

1. For the purposes of this Part, a person shall be deemed to have a place of residence in the constituency, if he—

- (a) ordinarily lives in the constituency, or
- (b) has his family dwelling-house in the constituency, and occasionally occupies it, or
- (c) maintains in the constituency a dwelling-house ready for occupation in charge of servants, and occasionally occupies it.

*Joint Families.*

2. Where an estate or mahal or share of an estate or mahal or land is held, or where income tax is paid jointly by the members of a joint family, the family shall be adopted as the unit for deciding whether under this Part the requisite qualification exists; and, if it does exist, the person qualified shall be the manager of the family:

Provided that the entry on an electoral roll of a person in his capacity as the manager of a joint family shall not disqualify him as an elector in his individual capacity.

*The Central Provinces Constituency.*

3. A person shall be qualified as an elector for the Central Provinces constituency who has a place of residence in the constituency and who—

- (a) holds in proprietary right land the land revenue or kamil-jama of which is not less than Rs. 3,000; or
- (b) was, in the financial year preceding that in which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules assessed to income tax on an income of not less than Rs. 20,000; or
- (c) is or has been a non-official member of either chamber of the Indian Legislature or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Central Provinces Legislative Council; or
- (d) is or has been the non-official president of a municipal committee established under the Central Provinces Municipal Act, 1903, or under the Central Provinces Municipal Act, 1922, or the non-official chairman of a district council established under the Central Provinces Local Self-Government Act, 1883; or
- (e) is or has been a member of the Senate or a Fellow or an Honorary Fellow of any University constituted by law in British India; or
- (f) is recognized by the Government as the holder of the title of Shams-ul-Ulama or of the title of Mahamahopadhyaya.

## PART VIII.—ASSAM

*Joint Families.*

1. Where property is held or payments are made jointly by the members of a joint family, the family shall be adopted as the unit for deciding whether under this Part the requisite qualification exists; and, if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof and in other cases the member authorized in that behalf by the family concerned.

*Non-Muhammadan and Muhammadan Constituencies.*

2. A person shall be qualified as an elector for either of the general constituencies who has a place of residence in the province of Assam and who—

- (a) is liable to pay annually not less than Rs. 2,000 as land revenue or not less than Rs. 200 as local rate; or
- (b) was in the financial year preceding that in which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules, assessed to income tax on an income of not less than Rs. 12,000; or
- (c) is or has been a non-official member of either chamber of the Indian Legislature or has been a non-official member of the Indian Legislative Council

as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Assam Legislative Council ; or

- (d) is or has been a non-official chairman of Commissioners appointed in Assam under the Bengal Municipal Act, 1876, or of a municipality established in Assam under the Bengal Municipal Act, 1884, or of a local board established under the Assam Local Self-Government Act, 1915 ; or
- (e) is or has been a member of the Senate or a Fellow or an Honorary Fellow of any University constituted by law in British India ; or
- (f) is the non-official chairman of any central co-operative bank or banking union which is a registered society within the meaning of section 2 of the Co-operative Societies Act, 1912 ; or
- (g) is recognized by the Government as the holder of the title of Shams-ul-Ulama or of the title of Mahamahopadhyaya :

Provided that—

(i) no person other than a Muhammadan shall be qualified as an elector in the Muhammadan constituency, and

(ii) no Muhammadan shall be qualified as an elector in the non-Muhammadan constituency.

3. For the purpose of this Part, a person shall be deemed to have a place of residence in a constituency, if he—

- (a) ordinarily resides in the constituency, or
- (b) has his family dwelling-house in the constituency and occasionally occupies it, or
- (c) maintains in the constituency a dwelling-house ready for occupation in charge of servants, and occasionally occupies it.

## PART IX.—BURMA

### *The General Constituency.*

1. A person shall be qualified as an elector for the Burma constituency who has a place of residence in the province of Burma and who

- (a) has paid, during and in respect of the year of assessment preceding the date on which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules, land revenue amounting to not less than Rs. 300 ; or
- (b) was, in the financial year preceding the date on which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules, assessed to income tax on an income of not less than Rs. 5,000 ; or
- (c) is or has been a non-official member of either chamber of the Indian Legislature or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Burma Legislative Council ; or
- (d) is or has been the president or vice-president of the Rangoon Municipal Committee or is or has been the President or is the Vice-President of any other municipal committee established under the Burma Municipal Act, 1898, or of a district council ; or
- (e) is or has been a member of the Senate or a Fellow or an Honorary Fellow of any University constituted by Law in British India ; or
- (f) is the non-official chairman or vice-chairman of a district central bank which is a registered society within the meaning of section 2 of the Co-operative Societies Act, 1912 ; or

- (g) is recognized by the Government as the holder of the title of Shams-ul-Ulama or of the title of Mahamahopadhyaya.

*The European Commerce Constituency.*

2. A person shall be qualified as an elector for the Burma Chamber of Commerce constituency who has a place of residence in Burma and is a Chamber member of that Chamber, or a person entitled to exercise the rights and privileges of Chamber membership on behalf of and in the name of any firm, company, or other corporation.

3. For the purpose of this Part, a person shall be deemed to have a place of residence in the province of Burma, if he—

- (a) ordinarily lives in the province, or
- (b) has his family dwelling-house in the province and occasionally occupies it, or
- (c) maintains in the province a dwelling-house ready for occupation in charge of servants, and occasionally occupies it.



# THE LEGISLATIVE ASSEMBLY RULES

## PART I

### *Composition of Legislative Assembly and Constituencies.*

III. The Legislative Assembly shall consist of—

- (1) one hundred and three elected members, and
- (2) forty-one members nominated by the Governor-General, of whom twenty-six shall be officials, and one shall be a person nominated as the result of an election held in Berar.

### *Special Qualifications for Election in case of Certain Constituencies.*

VI.—(1) No person shall be eligible for election as a member of the Legislative Assembly to represent a general constituency other than a constituency in the province of Burma or the Delhi constituency, unless

- (a) his name is entered on the electoral roll of the constituency, or of a constituency situate in the same province and prescribed for elections to the provincial council by rules under section 72 A of the Act, and
- (b) in the case of a non-Muhammadan, Muhammadan, Sikh or European constituency in the provinces of Madras, Bombay, Bengal, the Punjab, or Bihar and Orissa, or in the Central Province, he is himself a non-Muhammadan, Muhammadan, Sikh or European, as the case may be.

(2) No person shall be eligible for election as a member of the Legislative Assembly to represent a special constituency, or a constituency in the province of Burma or Delhi, unless his name is entered on the electoral roll of the constituency.

(3) For the purposes of these rules—

- (a) ‘general constituency’ means a non-Muhammadan, Muhammadan, European, non-European, Sikh constituency, or the Delhi constituency; and
- (b) ‘special constituency’ means a Landholders’ or Indian Commerce constituency.

### *Qualifications of Electors.*

VIII.—(1) The qualifications of an elector for a general constituency shall be such qualifications based on—

- (i) community,
- (ii) residence, and
- (iii)—(a) ownership or occupation of a building, or
- (b) assessment to or payment of municipal or cantonment rates or taxes or local cesses, or
- (c) assessment to or payment of income tax, or
- (d) the holding of land, or
- (e) membership of a local body,

as are specified in Schedule II, in the case of that constituency.

(2) The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule II in the case of that constituency.

## SCHEDULE I

(See Rule IV.)

## I.—LIST OF CONSTITUENCIES ENTITLED TO REPRESENTATION IN EVERY LEGISLATIVE ASSEMBLY

<i>Province.</i>	<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>
Madras . .	Madras City	Non-Muham- madan Urban	The City of Madras as defined in section 3 (9) of the Madras City Municipal Act, 1919, but including Fort St. George	1
Ditto . .	Ganjam <i>cum</i> Vizagapatam	Non-Muham- madan Rural	The Districts and Agencies of Ganjam and Vizagapatam	1
Ditto . .	Godavari <i>cum</i> Kistna	Ditto	The District and Agency of Godavari and the District of Kistna	1
Ditto . .	Guntur <i>cum</i> Nellore	Ditto	The Districts of Guntur and Nellore	1
Ditto . .	Madras ceded districts and Chittoor	Ditto	The Districts of Anantpur, Bellary, Cuddapah, Kurnool, and Chittoor	1
Ditto . .	Salem and Coimbatore <i>cum</i> North Arcot	Ditto	The Districts of Salem, Coimbatore and North Arcot	1
Ditto . .	South Arcot <i>cum</i> Chingleput	Ditto	The Districts of South Arcot and Chingleput	1
Ditto . .	Tanjore <i>cum</i> Trichinopoly	Ditto	The Districts of Tanjore and Trichinopoly	1
Ditto . .	Madura and Ramnad <i>cum</i> Tinnevely	Ditto	The Districts of Madura, Ramnad, and Tinnevely	1
Ditto . .	West Coast and Nilgiris (Non-Muham- madan)	Ditto	The Districts of the Nilgiris, Malabar, Anjengo, and South Kanara	1
Ditto . .	North Madras (Muham- madan)	Muhammadan	The Districts and Agencies of Ganjam, Vizagapatam, and Godavari, and the Districts of Kistna, Guntur, Nellore, Anantpur, Bellary, Cuddapah, Kurnool, and Chittoor	1
Ditto . .	South Madras (Muham- madan)	Ditto	The Districts of Chingleput, Madras, North Arcot, Salem, Coimbatore, South Arcot, Tanjore, Trichinopoly, Madura, Ramnad, and Tinnevely	1
Ditto . .	West Coast and Nilgiris (Muhammadan)	Ditto	The Districts of the Nilgiris, Malabar, Anjengo, and South Kanara	1
Ditto . .	Madras (European)	European	The Madras Presidency	1
Ditto . .	Madras Landholders	Landholders	Ditto	1
Ditto . .	Madras Indian Commerce	Indian Commerce	Ditto	1
Bombay . .	Bombay City (Non-Muhammadan)	Non-Muham- madan Urban	The City of Bombay	2
Ditto . .	Sind (Non-Muham- madan)	Non-Muham- madan Rural	The Province of Sind	1

<i>Province.</i>	<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>
Bombay	Bombay Northern Division (Non-Muhammadan)	Non-Muhammadan Rural	The Northern and Bombay Suburban Divisions	1
Ditto	Bombay Central Division (Non-Muhammadan)	Ditto	The Central Division	2
Ditto	Bombay Southern Division (Non-Muhammadan)	Ditto	The Southern Division	1
Ditto	Bombay City (Muhammadan)	Muhammadan Urban	The City of Bombay	1
Ditto	Sind (Muhammadan)	Muhammadan Rural	The Province of Sind	1 <sup>1</sup>
Ditto	Bombay (European)	European	The Bombay Presidency, excluding Aden (Non-Territorial)	2
Ditto	The Indian Merchants' Chamber and Bureau	Indian Commerce		1
Bengal	Calcutta (Non-Muhammadan)	Non-Muhammadan Urban	Calcutta as defined in section 3 (7) of the Calcutta Municipal Act, 1899	1
Ditto	Calcutta Suburbs (Non-Muhammadan)	Ditto	The municipalities and cantonments of the Districts of the 24 Parganas, Hooghly, and Howrah	1
Ditto	Burdwan Division (Non-Muhammadan)	Non-Muhammadan Rural	The Burdwan Division excluding the municipalities of the Hooghly and Howrah Districts	1
Ditto	Presidency Division (Non-Muhammadan)	Ditto	The Presidency Division excluding the municipalities and cantonments of the 24 Parganas District	1
Ditto	Dacca Division (Non-Muhammadan)	Ditto	The Dacca Division	1
Ditto	Chittagong and Rajshahi Divisions (Non-Muhammadan)	Ditto	The Chittagong Division excluding the Chittagong Hill Tracts and the Rajshahi Division excluding the District of Darjeeling	1
Ditto	Calcutta and Suburbs (Muhammadan)	Muhammadan Urban	Calcutta as defined in section 3 (7) of the Calcutta Municipal Act, 1899, and the municipalities and cantonments of the Districts of the 24 Parganas, Hooghly, and Howrah	1
Ditto	Burdwan and Presidency Division (Muhammadan)	Muhammadan Rural	The Burdwan and Presidency Divisions excluding the municipalities and cantonments of the Districts of the 24 Parganas, Hooghly, and Howrah	1
Ditto	Dacca Division (Muhammadan)	Ditto	The Dacca Division	2

<sup>1</sup> The Sind (Muhammadan) constituency is entitled to elect a second member for the first, third, and succeeding alternate Assemblies under Part II of this Schedule.

<i>Province.</i>	<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>
Bengal . .	Chittagong Division (Muhammadan)	Muhammadan Rural	The Chittagong Division excluding the Chittagong Hill Tracts	1
Ditto . .	Rajshahi Division (Muhammadan)	Ditto	The Rajshahi Division excluding the District of Darjeeling	1
Ditto . .	Bengal (European)	European	The Bengal Presidency excluding the Chittagong Hill Tracts and the District of Darjeeling	3
Ditto . .	Bengal landholders	Landholders	Ditto	1
United Provinces	Cities of the United Provinces (Non-Muhammadan)	Non-Muhammadan Urban	The municipalities and cantonments of Agra, Meerut, Cawnpore, Benares, Allahabad, Bareilly, and Lucknow	1
Ditto . .	Meerut Division (Non-Muhammadan)	Non-Muhammadan Rural	The Meerut Division excluding the municipality and cantonment of Meerut	1
Ditto . .	Agra Division (Non-Muhammadan)	Ditto	The Agra Division excluding the municipality and cantonment of Agra	1
Ditto . .	Rohilkhand and Kumaun Divisions (Non-Muhammadan)	Ditto	The Rohilkhand and Kumaun Divisions excluding the municipality and cantonment of Bareilly	1
Ditto . .	Allahabad and Jhansi Divisions (Non-Muhammadan)	Ditto	The Allahabad Division (excluding the municipalities and cantonments of Allahabad and Cawnpore) and the Jhansi Division	1
Ditto . .	Benares and Gorakhpur Divisions (Non-Muhammadan)	Ditto	The Benares and Gorakhpur Divisions excluding the municipality and cantonment of Benares	1
Ditto . .	Lucknow Division (Non-Muhammadan)	Ditto	The Lucknow Division excluding the municipality and cantonment of Lucknow	1
Ditto . .	Fyzabad Division (Non-Muhammadan)	Ditto	The Fyzabad Division	1
Ditto . .	Cities of the United Provinces (Muhammadan)	Muhammadan Urban	The municipalities and cantonments of Agra, Meerut, Cawnpore, Benares, Allahabad, Bareilly, and Lucknow	1
Ditto . .	Meerut Division (Muhammadan)	Muhammadan Rural	The Meerut Division excluding the municipality and cantonment of Meerut	1
Ditto . .	Agra Division (Muhammadan)	Ditto	The Agra Division excluding the municipality and cantonment of Agra	1
Ditto . .	Rohilkhand and Kumaun Divisions (Muhammadan)	Ditto	The Rohilkhand and Kumaun Divisions excluding the municipality and cantonment of Bareilly	1

<i>Province.</i>	<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>
United Provinces	United Provinces Southern Divisions (Muhammadan)	Muhammadan Rural	The Allahabad, Jhansi, Benares, and Gorakhpur Divisions, excluding the municipalities and cantonments of Allahabad, Cawnpore, and Benares	1
Ditto . .	Lucknow and Fyzabad Divisions (Muhammadan)	Ditto	The Lucknow and Fyzabad Divisions excluding the municipality and cantonment of Lucknow	1
Ditto . .	United Provinces (European)	European	The United Provinces of Agra and Oudh	1
Ditto . .	United Provinces Landholders	Landholders	The United Provinces of Agra and Oudh	1
Punjab . .	Ambala Division (Non-Muhammadan)	Non-Muhammadan	The Ambala Division	1
Ditto . .	Jullundur Division (Non-Muhammadan)	Ditto	The Jullundur Division	1
Ditto . .	West Punjab (Non-Muhammadan)	Ditto	The Lahore, Rawal Pindi, and Multan Divisions	1
Ditto . .	East Punjab (Muhammadan)	Muhammadan	The Ambala Division, and the Districts of Kangra, Hoshiarpur, Jullundur, and Ludhiana	1
Ditto . .	East Central Punjab (Muhammadan)	Ditto	The Districts of Ferozepur, Lahore, Amritsar, and Gurdaspur	1
Ditto . .	West Central Punjab (Muhammadan)	Ditto	The Districts of Sialkot, Gujranwala, Sheikhpura, and Lyallpur	1
Ditto . .	North Punjab (Muhammadan)	Ditto	The Districts of Gujrat, Jhelum, and Rawal Pindi	1
Ditto . .	North-west Punjab (Muhammadan)	Ditto	The Districts of Attock, Mianwali, Shahpur, and Jhang	1
Ditto . .	South-west Punjab (Muhammadan)	Ditto	The Districts of Multan, Montgomery, Muzaffargarh, and Dera Ghazi Khan	1
Ditto . .	East Punjab (Sikh)	Sikh	The Ambala and Jullundur Divisions	1
Ditto . .	West Punjab (Sikh)	Ditto	The Lahore, Rawal Pindi, and Multan Divisions	1
Ditto . .	Punjab Landholders	Landholders	The Province of the Punjab	1
Bihar and Orissa	Tirhut Division (Non-Muhammadan)	Non-Muhammadan	The Tirhut Division	2
Ditto . .	Orissa Division (Non-Muhammadan)	Ditto	The Orissa Division	2
Ditto . .	Patna cum Shahabad (Non-Muhammadan)	Ditto	The Patna and Shahabad Districts	1
Ditto . .	Gaya cum Monghyr (Non-Muhammadan)	Ditto	The Gaya and Monghyr Districts	1
Ditto . .	Bhagalpur, Purnea, and the Santhal Parganas (Non-Muhammadan)	Ditto	The Districts of Bhagalpur, Purnea, and the Santhal Parganas	1

<i>Province.</i>	<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Bihar and Orissa	Chota Nagpur Division (Non-Muham- madan)	Non-Muham- madan	The Chota Nagpur Divi- sion	1
Ditto . .	Patna and Chota Nag- pur cum Orissa (Mu- hammadan)	Muhammadan	The Patna, Chota Nag- pur, and Orissa Divi- sions	1
Ditto . .	Bhagalpur Division (Muhammadan)	Ditto	The Bhagalpur Division	1
Ditto . .	Tirhut Division (Mu- hammadan)	Muhammadan	The Tirhut Division	1
Ditto . .	Bihar and Orissa Landholders	Landholders	The Province of Bihar and Orissa	1
Central Provinces	Nagpur Division	Non-Muham- madan	The Nagpur Division, excluding the Siron- cha Tahsil of the Chanda District	1
Ditto . .	Central Provinces Hindi Divisions	Ditto	The Nerbudda, Jubbul- pore and Chhattisgarh Divisions, excluding the Mandla District (except the Mandla Municipality)	2
Ditto . .	Central Provinces (Muhammadan)	Muhammadan	The Central Provinces, excluding the Mandla District (except the Mandla Municipality) and the Sironcha Tah- sil of the Chanda Dis- trict	1
Ditto . .	Central Provinces Landholders	Landholders	Ditto	1
Assam . .	Assam Valley	Non-Muham- madan	The Districts of the Assam Valley	1
Ditto . .	Surma Valley cum Shillong	Ditto	The District of the Surma Valley and the municipality and can- tonment of Shillong	1
Ditto . .	Assam (Muham- madan)	Muhammadan	The Province of Assam	1
Ditto . .	Assam (European)	European	Ditto	1
Burma . .	Burma (Non-Euro- pean)	Non-European	The Province of Burma	3
Ditto . .	Burma (European)	European	Ditto	1
Delhi . .	Delhi	General	The Province of Delhi	1

The following zamindari and jagirdari estates shall be excluded from the area of any constituency in the Central Provinces in which they would otherwise be included, namely :

- (a) the estates specified in Part VI of the First Schedule to the Scheduled Districts Act, 1874 ;
- (b) the following zamindaries of the Chhattisgarh Division, namely, Kanteli, Bhatgoan, Bilaigarh-Katgi, Parpori, Khujji, Deori, Suarmar, Naira, and Kauria.

**II.—(1) LIST OF CONSTITUENCIES ENTITLED TO REPRESENTATION IN  
ROTATION**

<i>Province.</i>	<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Bombay	Sind (Muhammadan)	Muhammadan Rural	The Province of Sind	1
	Bombay Northern Di- vision (Muhamma- dan)	Ditto	The Northern and Bombay Suburban Divisions	
	Bombay Central Divi- sion (Muhamma- dan)	Ditto	The Central Division	
Ditto	Bombay Southern Di- vision (Muhamma- dan)	Ditto	The Southern Division	1
Ditto	Sind Jagirdars and Zamindars	Landholders	The Province of Sind	1
	Gujarat and Deccan Sardars and Inam- dars	Ditto	The Bombay Presidency excluding Sind	
Ditto	The Bombay Mill- owners' Association	Indian Com- merce	(Non-territorial)	1
	The Ahmedabad Mill- owners' Association	Ditto	Ditto	
	Bengal National Chamber of Com- merce	Ditto	Ditto	
Bengal	Marwari Association	Ditto	Ditto	1
	Bengal Mahajan Sabha	Ditto	Ditto	

(2) In a case where two constituencies are bracketed together as entitled to elect one member, the constituency first mentioned shall elect to the first Legislative Assembly at the general election and at all by-elections so long as the first Legislative Assembly continues, and the constituency second mentioned shall elect at the general election to the next Legislative Assembly and at by-elections in like manner, and thereafter the constituencies shall elect in like manner in rotation to succeeding Legislative Assemblies.

(3) In the case where three constituencies are bracketed together as entitled to elect one member, the constituency first mentioned shall elect to the first Legislative Assembly at the general election and at all by-elections so long as the first Legislative Assembly continues, and the second-mentioned constituency shall elect at the general election to the next Legislative Assembly and at by-elections in like manner, and the third-mentioned constituency shall elect at the general election to the third Legislative Assembly and at by-elections in like manner, and thereafter the constituencies shall elect in like manner in rotation to succeeding Legislative Assemblies.

## SCHEDULE II

(See Rule VIII.)

*Note.*—Only those portions of this Schedule which deal with the electoral qualification are given.

## QUALIFICATIONS OF ELECTORS

## PART I.—MADRAS

*Definitions.*

## GENERAL CONSTITUENCIES

*Madras City Constituency.*

6. A person shall be qualified as an elector for the Madras City constituency who is neither a Muhammadan nor a European and who resided in the constituency for not less than 120 days in the previous year and who—

- (a) was in the previous year assessed to an aggregate amount of not less than Rs.20 in respect of one or more of the following taxes, namely, property tax, tax on companies, or profession tax ; or
- (b) was in the previous year assessed to income tax.

*Rural Constituencies.*

7. A person shall be qualified as an elector in any other general constituency who resided in the constituency for not less than 120 days in the previous year and who—

- (a) is registered as a ryotwari pattadar or as an inamdar of land of which the annual rent value is not less than Rs.50 ; or
  - (b) holds on a registered lease under a ryotwari pattadar or inamdar of land of which the annual rent value is not less than Rs.50 ; or
  - (c) is registered jointly with the proprietor under section 14 of the Malabar Land Registration Act, 1895, as the occupant of land of which the annual rent value is not less than Rs.50 ; or
  - (d) is a landholder holding an estate of which the annual rent value is not less than Rs.50 ; or
  - (e) holds as ryot or as tenant under a landholder land of which the annual rent value is not less than Rs.50 ; or
  - (f) was in the previous year assessed in a municipality included in the constituency to an aggregate amount of not less than Rs.20 in respect of one or more of the following taxes, namely, property tax, tax on companies, or profession tax ; or
  - (g) was in the previous year assessed to income tax :
- Provided that
- (i) no Muhammadan or European shall be qualified as an elector for a non-Muhammadan constituency ; and
  - (ii) a person shall be qualified as an elector for a Muhammadan or European constituency according as he is a Muhammadan or a European.

## SPECIAL CONSTITUENCIES

*The Landholders' Constituency.*

8. A person shall be qualified as an elector for the Landholders' constituency if his name is registered on the electoral roll of any Landholders' constituency of the Legislative Council of the Governor of Madras.



*The Indian Commerce Constituency.*

9. Every Indian and one duly authorized representative of every Indian partnership shall be qualified as an elector on the roll of the Indian Commerce constituency if such person has resided in the presidency for not less than 120 days in the previous year, and if he or the partnership, as the case may be, has been assessed to income tax in the previous year on an income of not less than Rs.10,000 derived from business within the meaning of the Indian Income-tax Act, 1922.

*Explanation.*—For the purposes of this paragraph—

- (a) 'Indian' includes any person who is not a European, and
- (b) 'Indian partnership' means any non-European joint family, or any firm, association or company of which no partner or director is a European.

## PART II.—BOMBAY

## GENERAL CONSTITUENCIES

*Non-Muhammadan and Muhammadan Constituencies.*

6. A person shall be qualified as an elector for a non-Muhammadan or Muhammadan constituency who, on the 1st day of January next preceding the date of publication of the electoral roll, had a place of residence within the constituency or within a contiguous constituency of the same communal description and who—

- (a) in the case of the Sind constituencies, on the 1st day of January aforesaid, held in his own right or occupied as a permanent tenant or as a lessee from Government alienated or unalienated land in such constituency on which, in any one of the five revenue years preceding the publication of the electoral roll, an assessment of not less than Rs.37-8-0 land revenue in the Upper Sind Frontier district and of not less than Rs.75 land revenue in any other district has been paid or would have been paid if the land had not been alienated ; or
- (b) in the case of any other constituency, on the 1st day of January aforesaid held in his own right or occupied as a tenant in such constituency alienated or unalienated land assessed at, or of the assessable value of, not less than Rs.37-8-0 land revenue in the Panch Mahals or Ratnagiri districts and not less than Rs.75 land revenue elsewhere ; or
- (c) on the 1st day of January aforesaid was the alienee of the right of Government to the payment of rent or land revenue amounting to Rs.37.8 in the Panch Mahals or Ratnagiri or Upper Sind Frontier districts and of Rs.75 elsewhere, leviable in respect of land so alienated and situate within the constituency or was a Khot or a sharer in a Khoti village in the constituency, or a sharer in a Bhagdari or Narbadari village in the constituency, responsible for the payment of Rs.37.8 land revenue in the Panch Mahals or Ratnagiri districts and Rs.75 land revenue elsewhere ; or
- (d) was assessed to income tax in the financial year preceding that in which the publication of the electoral roll takes place :

Provided that

- (i) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and
- (ii) no Muhammadan or European shall be qualified as an elector for a non-Muhammadan constituency.

*The European Constituency.*

7. A person shall be qualified as an elector for the Bombay (European) constituency whose name is registered on the electoral roll of either European constituency of the Legislative Council of the Governor of Bombay.

## SPECIAL CONSTITUENCIES

*The Landholders' Constituencies.*

8.—(1) A person shall be qualified as an elector for the Sind Jagirdars and Zamindars constituency who is a Jagirdar of the first or second class in Sind, or a Zamindar who in each of the three revenue years preceding the publication of the electoral roll has paid not less than Rs.1,000 land revenue on lands situated in any district in Sind.

(2) A person shall be qualified as an elector for the Deccan and Gujarat Sardars and Inamdars constituency whose name is entered in the list for the time being in force under the Resolutions of the Government of Bombay in the Political Department No. 2363, dated the 23rd July 1867, and No. 6265, dated the 21st September 1909, or who on the 1st day of January next preceding the publication of the electoral roll was the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village in the presidency of Bombay excluding Sind and Aden, or was the sole holder on Talukdari tenure of such a village.

*The Indian Commerce Constituency.*

9. Members of the Indian Merchants' Chamber and Bureau and of the Bombay Millowner's Association and of the Ahmedabad Millowner's Association shall be qualified as electors respectively for the constituency comprising the Association of which they are members.

## PART III.—BENGAL

*Calcutta (Non-Muhammadan) Constituency.*

4. A person shall be qualified as an elector for the Calcutta (non-Muhammadan constituency who is neither a Muhammadan nor a European and who has a place of residence in Calcutta as defined in section 3 (7) of the Calcutta Municipal Act, 1899, and who—

- (a) during and in respect of the previous year has paid not less than Rs.60 as consolidated rate levied under Chapter XII of the Calcutta Municipal Act, 1899, or as taxes levied under Chapter XIV of that Act :  
provided that where any payment has been made in respect of the consolidated rate, a person shall be qualified as an elector only if his name is entered in the municipal assessment book in respect of the payment ; or
- (b) was in the previous year assessed to income tax on an income of not less than Rs.5,000 ; or
- (c) is a member of a firm which in the previous year was assessed to income tax, and whose share of the firm's income on which income tax was so assessed is certified by an Income-tax Officer in a certificate specifying the names and shares of the partners of the firm to have been not less than Rs.5,000.

*Non-Muhammadan and Muhammadan Constituencies.*

5. A person shall be qualified as an elector for any other general constituency who has a place of residence in the constituency and who—

(a) during and in respect of the previous year, or, as the case may be, during and in respect of the Bengali year next preceding that in which the electoral roll or the list of amendments thereto, as the case may be, for the time being under preparation is first published under these rules, has paid not less than Rs.60 as consolidated rate levied under Chapter XII of the Calcutta Municipal Act, 1899, or as taxes levied under Chapter XIV of that Act :

provided that where any payment has been made in respect of consolidated rate, a person shall be qualified as an elector only if his name is entered in the municipal assessment book in respect of the payment ; or

- (b) has paid, during and in respect of such year, in the municipality of Howrah or of Cossipore-Chitpur, municipal taxes or fees of not less than Rs.10, or in any other municipality or cantonment, municipal or cantonment taxes or fees of not less than Rs.5, or
- (c) has paid, during and in respect of such year, road and public works cesses under the Cess Act, 1880, of not less than Rs.5, or
- (d) has paid, during and in respect of such year, chaukidari tax under the Village-Chaukidari Act, 1870, or union rate under the Bengal Village Self-Government Act, 1919, of not less than Rs.5, or
- (e) was in the previous year assessed to income tax on an income of not less than Rs.5,000, or
- (f) is a member of a firm which in the previous year was assessed to income tax, and whose share of the firm's income on which income tax was so assessed is certified by an Income-tax Officer in a certificate specifying the names and shares of the partners of the firm to have been not less than Rs.5,000 :

Provided that

- (i) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and
- (ii) no Muhammadan or European shall be qualified as an elector for a non-Muhammadan constituency.

#### *The European Constituency.*

6. A person shall be qualified as an elector for the Bengal (European) constituency who is a European and has a place of residence in the constituency and who—

- (a) was in the previous year assessed to income tax on an income of not less than Rs.12,000, or
- (b) is a member of a firm which was in the previous year assessed to income tax, and whose share of the firm's income on which income tax was so assessed is certified by an Income-tax Officer in a certificate specifying the names and shares of the partners of the firm to have been not less than Rs.12,000.

#### SPECIAL CONSTITUENCIES

##### *The Landholders' Constituency.*

7. A person shall be qualified as an elector for the Bengal Landholders' constituency who has a place of residence in the constituency and who during the previous year—

- (a) in the Burdwan Division or the Presidency Division held in his own right, as a proprietor, one or more estates or shares of estates and paid in respect thereof land revenue amounting to not less than Rs.6,000, or road and public work cesses amounting to not less than Rs.1,500, or
- (b) in the Dacca or the Rajshahi or the Chittagong Division held in his own right, as a proprietor, one or more estates or shares of estates, or one

or more permanent tenures or shares of such tenures held direct from such a proprietor and paid in respect thereof land revenue amounting to not less than Rs.4,000, or road and public works cesses amounting to not less than Rs.1,000.

*Determination of Qualifications.*

8. In determining the qualification of a landholder as an elector—

- (a) only such estates and shares of estates, and only such permanent tenures and shares of permanent tenures, as are not within the district of Darjeeling or the Chittagong Hill Tracts shall be taken into account ;
- (b) only such estates and shares of estates as are held by him in his own right and not in a fiduciary capacity and are registered in his own name in the registers maintained under the Land Registration Act, 1876, shall be taken into account ;
- (c) only such permanent tenures and shares of permanent tenures as are held by him (as owner) in his own right, and not in a fiduciary capacity, shall be taken into account ;
- (d) only land revenue or road and public works cesses payable in respect of his own personal share shall be taken into account ;
- (e) if the amount of land revenue or road and public works cesses paid by a landholder in respect of any share of an estate or permanent tenure is not definitely known, the District Officer of the district in which such estate or tenure is situated shall estimate the amount paid in respect of such share, and his decision shall be final.

*Explanation.*—A *mutwalli* or manager of a *wakf* estate shall be deemed to hold such estate in his own right, but a trustee or manager of an estate other than a *wakf* estate shall not be so deemed.

*The Indian Commerce Constituencies.*

9. Members of the Bengal National Chamber of Commerce and of the Marwari Association and of the Bengal Mahajan Sabha shall be qualified as electors respectively for the constituency comprising the Chamber, Association or Sabha of which they are members.

*Explanation.*—For the purposes of this paragraph ‘member’ includes any person entitled to exercise the rights and privileges of membership on behalf and in the name of any firm, company or corporation registered as a member.

## PART IV.—THE UNITED PROVINCES

### GENERAL CONSTITUENCIES

*Non-Muhammadan and Muhammadan Urban Constituencies.*

6. A person shall be qualified as an elector for a non-Muhammadan or Muhammadan urban constituency who is not a European and who—

- (1) has a place of residence in the constituency or within two miles of the boundary thereof, and
- (a) is, in any place in the area aforesaid in which a house or building tax is in force, the owner or tenant of a house or building of which the rental value is not less than Rs.180 per annum, or
- (b) was, in any area in the constituency in which no house or building tax is in force, assessed in the previous year to municipal tax on an income of not less than Rs.1,000 per annum, or
- (c) is, in any area in the constituency in which neither a house or building tax nor a municipal tax based on income is in force, the owner or tenant of a house or building of which the rental value is not less than Rs.180 per annum, or

- (d) has within the constituency any of the qualifications based on the holding of land hereinafter prescribed for an elector of a rural constituency ; or  
 (2) has a place of residence in the constituency and was in the previous year assessed to income tax :

Provided that

- (i) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and  
 (ii) no Muhammadan shall be qualified as an elector for a non-Muhammadan constituency.

*Non-Muhammadan and Muhammadan Rural Constituencies.*

7. A person shall be qualified as an elector for a non-Muhammadan or Muhammadan rural constituency who is not a European and who has a place of residence in the constituency and—

- (a) is, in an urban area included in the constituency in which a house or building tax is in force, the owner or tenant of a house or building of which the rental value is not less than Rs.180 per annum ; or  
 (b) was, in an urban area included in the constituency in which no house or building tax is in force, assessed in the previous year to municipal tax on an income of not less than Rs.1,000 per annum ; or  
 (c) is, in an urban area included in the constituency where neither a house or building tax nor a municipal tax based on income is in force, the owner or tenant of a house or building of which the rental value is not less than Rs.180 per annum ; or  
 (d) is the owner of land in the constituency in respect of which land revenue amounting to not less than Rs.150 per annum is payable ; or  
 (e) is the owner of land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than Rs.150 per annum ; or  
 (f) being a resident in the hill pattis of Kumaun—  
 (i) is liable to pay land revenue or rent amounting to not less than Rs. 25 per annum, or  
 (ii) is the owner of land in the hill pattis free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other land in the hill pattis, amounts to not less than Rs.25 per annum, or  
 (iii) is the owner of a fee-simple estate ; or  
 (g) being in the constituency a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1901, or an under-proprietor or occupancy tenant as defined in the Oudh Rent Act, 1886, is liable to pay rent as such of not less than Rs.150 per annum ; or  
 (h)—(i) being in the constituency a tenant as defined in the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, other than a sub-tenant, holds land as such in respect of which rent of not less than Rs.150 per annum or its equivalent in kind is payable ; or  
 (ii) in areas in the United Provinces in which the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, is not in force, holds land as a tenant in respect of which rent of not less than Rs.150 per annum or its equivalent in kind is payable ; or  
 (i) was in the previous year assessed to income tax :

Provided that

- (i) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and
- (ii) no Muhammadan shall be qualified as an elector for a non-Muhammadan constituency.

*The European Constituency.*

8. A person shall be qualified as an elector for the United Provinces (European) constituency who is a European and has a place of residence in the United Provinces of Agra and Oudh and has any of the qualifications prescribed in clauses (d), (e), (f), (g), (h) and (i) of paragraph 7 of this Part for an elector of a non-Muhammadan or Muhammadan rural constituency.

SPECIAL CONSTITUENCY

*The Landholders' Constituency.*

9. A person shall be qualified as an elector for the United Provinces Landholders' constituency who has a place of residence in the constituency, and—

- (a) is the owner of land in the constituency in respect of which land revenue amounting to not less than Rs.5,000 per annum is payable ; or
- (b) is the owner of land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than Rs.5,000 per annum :

Provided that, in determining the eligibility of a landholder as an elector, only land revenue payable or nominally assessed in respect of such land or share in land as he may hold in his own personal right and not in a fiduciary capacity shall be taken into account.

## PART V.—PUNJAB

### GENERAL CONSTITUENCIES

*Non-Muhammadan, Muhammadan and Sikh Constituencies.*

5. A person shall be qualified as an elector for a general constituency who resides in the constituency and who—

- (a) owned for the twelve months preceding the date of the publication of the electoral roll immovable property, not being land assessed to land revenue but including any building erected on such land, of the value of not less than Rs.15,000 or of an annual rental value of not less than Rs.336 :

Provided that a person shall be deemed to have owned such property for any period during which it was owned by any person through whom he derives title by inheritance ; or

- (b) is the owner of land assessed to land revenue of not less than Rs.100 per annum ; or
- (c) is an assignee of land revenue amounting to not less than Rs.100 per annum ; or
- (d) is a tenant or lessee, under the terms of a lease for a period of not less than three years, of Crown land for which rent of not less than Rs.100 is payable per annum :

Provided that, when the amount payable is assessed from harvest to harvest, the annual rent payable by such person shall be deemed to be

the annual average amount payable by him in the three years preceding the date of publication of the electoral roll ; or

(e) was during the financial year preceding the date of publication of the electoral roll assessed to income tax on an income of not less than Rs.5,000 :

Provided that

(i) no person shall be qualified as an elector for a Muhammadan constituency who is not a Muhammadan or for a Sikh constituency who is not a Sikh, and

(ii) no Muhammadan or Sikh shall be qualified as an elector for a non-Muhammadan constituency.

*Explanation.*—If any question arises as to whether any person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh, according as he makes or refuses to make, in such form and manner as the local Government may by regulation prescribe, a declaration that he is a Sikh.

#### SPECIAL CONSTITUENCY

##### *The Landholders' Constituency.*

6. A person shall be qualified as an elector for the Landholders' constituency who resides in the Punjab and who is—

(a) the owner of land assessed to land revenue of not less than Rs.1,000 per annum ; or

(b) an assignee of land revenue amounting to not less than Rs.1,000 per annum.

## PART VI.—BIHAR AND ORISSA

#### GENERAL CONSTITUENCIES

##### *Non-Muhammadan and Muhammadan Constituencies.*

4. A person shall be qualified as an elector for a general constituency who has a place of residence in the constituency, and—

(a) holds an estate or estates or a portion of an estate or portions of estates for which a separate account or accounts (including a residuary account) has or have been opened, for which land whether revenue paying or revenue free or rent free land, an aggregate amount of not less

(i) in the case of land in the Patna Division, than Rs.30, or

(ii) in the case of land in the Bhagalpore and Tirhut Divisions, than Rs.24, or

(iii) in the case of land in the Orissa and Chota Nagpur Divisions, than Rs.12,

is payable direct to the treasury as local cess ; or

(b) holds a tenure or tenures which is or are valued for the purpose of local cess at the aggregate amount of not less

(i) in the case of tenures in the Patna Division, than Rs.400 per annum, or

(ii) in the case of tenures in the Chota Nagpur Division, than Rs.300 per annum, or

(iii) in the case of tenures in the Bhagalpore Division, than Rs.200 per annum, or

(iv) in the case of tenures in the Tirhut Division, than Rs.150 per annum, or

(v) in the case of tenures in the Orissa Division, than Rs.100 per annum, or

(c) holds land as a raiyat and is liable to pay an annual aggregate rent or local cess amounting respectively—

- (i) to Rs.160 and Rs.5 in the Patna Division, or
- (ii) to Rs.96 and Rs.3 in the Tirhut Division, or
- (iii) to Rs.64 and Rs.2 in the Orissa Division, or
- (iv) to Rs.40 and Rs.1-4-0 in the Chota Nagpur Division, or
- (v) to Rs.144 and Rs.4-8-0 in the Bhagalpore and Monghyr districts, or
- (vi) to Rs.96 and Rs.3 in the Purnea and Santhal Parganas districts ; or

(d) was in the previous year assessed to income tax on an income of not less than Rs.3,840 ; or

(e) was in the previous year assessed to an aggregate amount of not less than Rs.15 in respect of any municipal or cantonment rates or taxes :

Provided that

- (i) no person who is not a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and
- (ii) no Muhammadan shall be qualified as an elector for a non-Muhammadan constituency.

*Explanation.*—If a person who is not qualified as an elector under clause (a), (b) or (c) in respect of estates, tenures, or land held in any one division or district, holds estates, tenures, or land in more than one division or district, and if the aggregate amount of the local cess or rent payable on such estates or land or of the valuation of such tenures is not less than the amount prescribed for the division or district in which the local cess or rent payable, or the valuation of his tenure or tenures, as the case may be, is largest, he shall be qualified as an elector for the constituency in which that division or district is situated, provided that he has a place of residence in any one of such divisions or districts.

#### SPECIAL CONSTITUENCY

##### *The Landholders' Constituency.*

5. A person shall be qualified as an elector for the Landholders' constituency who has a place of residence in the province of Bihar and Orissa and is liable to pay annually land revenue or local cess to an aggregate amount of not less than Rs.10,000 and Rs.2,500, respectively.

##### *Determination of Qualification.*

6. In determining any claim to a qualification for a Landholder's constituency—

- (a) only such estates or shares of estates as are held by a person as proprietor in his own right and not in a fiduciary capacity and are registered in his own name in registers maintained under the Land Registration Act, 1876, whether such estates are situated in one or more divisions, shall be taken into account ; and
- (b) if the amount paid by the landholder in respect of any such share of an estate is not definitely known, the District Officer of the district in which such estate is situated shall estimate the amount so paid in respect of such share, and his decision shall be final.

### PART VII.—THE CENTRAL PROVINCES

#### GENERAL CONSTITUENCIES

##### *Muhammadan and Non-Muhammadan Constituencies.*

6. A person shall be qualified as an elector for a general constituency who has a place of residence in the constituency and

- (a) owns or occupies as a tenant within an urban area in the constituency a



house or building, or part of a house or building, the annual rental value of which is not less

(i) in the case of a house in the Nagpur Municipality or in the Jubbulpore Municipality or Cantonment, than Rs.240, and

(ii) in the case of a house in any other urban area, than Rs.180 :

provided that, where such house or building or part is held by two or more persons in shares, no person shall be qualified in respect of a share the annual rental value of which is less than Rs.240 or Rs.180, as the case may be ; or

(b) is a proprietor or thekadar of an estate or mahal or of a share of an estate or mahal the land revenue or kami-jama of which is not less than Rs.300 ; or

(c) holds as a proprietor or thekadar in proprietary right sir land or khud-kasht, or is a malik-makbuza, raiyat or tenant of agricultural land, the assessed or assessable revenue or rent of which is not less

(i) in the case of land in the Raipur, Bilaspur, Drug, Chanda and Betul districts, than Rs.90 ; or

(ii) in the case of land in the Bhandara, Balaghat, Neema, Chhindwara and Seoni districts, than Rs.120 ; or

(iii) in the case of land in any other district than Rs.150 ; or

(d) was in the previous year assessed to income tax :

Provided that

(i) no person other than a Muhammadan shall be qualified as an elector for the Muhammadan constituency, and

(ii) no Muhammadan shall be qualified as an elector for a non-Muhammadan constituency.

*Explanation.*—For the purposes of clause (c) ‘ tenant ’ shall not include a sub-tenant or ordinary tenant of sir land.

#### SPECIAL CONSTITUENCY

##### *The Landholders' Constituency.*

7. A person shall be qualified as an elector for the Landholders' constituency who has a place of residence in the constituency and who—

(a) is the holder of a hereditary title recognized by Government and holds agricultural land in proprietary right ; or

(b) is the owner of an estate as defined in section 2 (3) of the Central Provinces Land Revenue Act, 1917 ; or

(c) holds land in proprietary right the land revenue or kamil-jama of which is not less than Rs. 5,000.

## PART VIII.—ASSAM

### *Qualifications of Electors.*

3. A person shall be qualified as an elector for any constituency who has during the previous year resided within the constituency and who—

(a) was in the previous year assessed in respect of municipal or cantonment rates or taxes to an aggregate amount of not less than Rs.20 ; or

(b) was in the previous year assessed to a tax of not less than Rs.10 in a union under Chapter III of the Bengal Municipal Act, 1876 ; or

(c) was in the previous year assessed to a chaukidari tax of not less than Rs. 2 under the Village-Chaukidari Act, 1870, in the Sylhet, Cachar or Goalpara district ; or

(d) in any district other than those mentioned in clause (c)

(i) owns land the land revenue upon which has been assessed or is assessable at not less than Rs. 45 per annum ; or

- (ii) is liable to pay a local rate of not less than Rs.3 per annum ; or
- (e) was in the previous year assessed to income tax on an income of not less than Rs. 3,600 :

Provided that

- (i) no person shall be qualified as an elector for the Muhammadan constituency who is not a Muhammadan, or for the European constituency who is not a European, and
- (ii) no Muhammadan or European shall be qualified as an elector for a non-Muhammadan constituency.

## PART IX.—BURMA

### QUALIFICATIONS OF ELECTORS FOR CONSTITUENCIES IN BURMA

#### *Definitions.*

1. For the purposes of this Part—
    - (a) ' a European ' means any person of European descent in the male line being a British subject and resident in British India, who either was born in or has a domicile in the United Kingdom or in any British possession or in any State in India, or whose father was so born or has or had up to the date of the birth of the person in question such a domicile ;
    - (b) ' previous agricultural year ' and ' previous financial year ' mean respectively the agricultural and financial year preceding that in which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules.
  2. A person shall be deemed to have a place of residence in the province of Burma if he—
    - (a) ordinarily lives in the province, or
    - (b) maintains in the province a dwelling-house ready for occupation and occasionally occupies it.
  3. A person shall be qualified as an elector of any constituency who has a place of residence in the province of Burma and who—
    - (a) has paid during and in respect of the previous agricultural year land revenue amounting to not less than
      - (i) Rs.150 in Lower Burma, or
      - (ii) Rs.100 in Upper Burma, or
    - (b) has paid during and in respect of the previous agricultural year that hameda tax amounting to not less than Rs.25, or
    - (c) was in the previous financial year assessed to income tax :
- Provided that
- (i) no person shall be qualified as an elector for the European constituency who is not a European, and
  - (ii) no European shall be qualified as an elector for the non-European constituency.

## PART X.—DELHI

#### *Definitions.*

1. For the purposes of this Part—
  - (a) ' annual rental value ' in relation to immovable property means the amount for which such property, together with its appurtenances and furniture, if any, is actually let or may reasonably be expected to let from year to year ;

- (b) 'date of publication of the electoral roll' means the date on which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules ;
- (c) 'land revenue' means
- (i) in the territory mentioned in Schedule I to the Delhi Laws Act, 1915, revenue as defined in section 4 (7) of the United Provinces Land Revenue Act, 1901 ;
  - (ii) in the rest of the Province, land revenue as defined in section 3 (6) of the Punjab Land Revenue Act, 1887 :
- Provided that in the case of fluctuating land revenue, or land revenue assessed on lands subject to river action, land revenue shall mean the average amount of such land revenue paid during the three years preceding the date of publication of the electoral roll ;
- (d) 'owner' does not include a mortgagee ;
- (e) 'the land records' means an attested record of rights or an attested annual record of rights maintained under Chapter IV of the Punjab Land Revenue Act, 1887, and includes an order finally sanctioning a mutation duly passed under that Chapter.

*Presumption as to Title.*

2. For the purposes of this Part, a person may be presumed to reside in a constituency if he owns a residential house, or a share in a residential house, in the constituency, and that house has not during the twelve months preceding the date of publication of the electoral roll been let on rent either in whole or in part.

*Land Records, &c., to be Conclusive Evidence.*

3. For the purpose of determining a claim to a qualification under this Part any entry in the land records or in any municipal or cantonment records shall be conclusive evidence of the facts stated therein.

*Joint Families.*

4. Where two or more persons are co-sharers in land assessed to land revenue or in other immovable property, or in a tenancy or lease of land assessed to land revenue, or in the receipt of assigned land revenue, every such person shall be qualified as an elector who would be so qualified if his share in such property, land tenancy, lease or assignment were held separately.

*Explanation.*—For the purpose of this paragraph the share of any such person who is under 21 years of age shall be deemed to be the share of his father, or, if his father is dead, of his eldest brother, provided that his father or eldest brother, as the case may be, is a co-sharer with him in the property.

THE CONSTITUENCY

5. A person shall be qualified as an elector for the constituency who resides in the constituency and who—

- (a) has owned in the constituency for the twelve months preceding the date of the publication of the electoral roll immovable property, not being land assessed to land revenue but including any building erected on such land, of the value of not less than Rs.15,000 or of an annual rental value of not less than Rs. 336. or has been tenant of such immovable property for a like period :

Provided that a person shall be deemed to have owned such property for any period during which it was owned by any person through whom he derives title by inheritance ; or

- (b) is the owner of land in the constituency assessed to land revenue of not less than Rs.100 per annum ; or

- (c) is an assignee of land revenue amounting to not less than Rs.100 ; or
- (d) is a tenant or lessee, under the terms of a lease for a period of not less than three years, of Crown land in the constituency for which rent of not less than Rs.100 per annum is payable :

Provided that, when the amount payable is assessed from harvest to harvest, the annual rent payable by such person shall be deemed to be the annual average amount payable by him in the three years preceding the date of publication of the electoral roll ; or

- (e) was during the financial year preceding the date of publication of the electoral roll assessed to income tax on an income of not less than Rs.5,000.

*Explanation.*—For the purposes of clause (a) any person who occupies a house, other than a house in any military or police lines, by virtue of any office, service or employment, shall, if the house is not inhabited by the person in whose service or employment he is, be deemed to occupy the house as a tenant.

## MADRAS RULES

### *Composition of Legislative Council.*

III. The Legislative Council of the Governor of Madras shall consist of—

- (1) the members of the Executive Council *ex-officio* ;
- (2) ninety-eight elected members ; and
- (3) such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to twenty-nine : of the members so nominated—
  - (a) not more than nineteen may be officials, and
  - (b) six shall be persons nominated as follows, namely :
    - (i) five to represent the following communities, namely, the Paraiyans, Pallans, Valluvans, Malas, Madigas, Chakkiliyans, Tottiyans, Cherumans and Holeyas, and
    - (ii) one to represent the inhabitants of backward tracts.

For the purpose of selecting persons to be nominated under sub-clause (b) of clause (3) of this rule, the Governor may, at his discretion, make regulations providing for their selection by the communities concerned.

### *Special Qualifications for Election in case of certain Constituencies.*

VI.—(1) (a) No person shall be eligible for election as a member of the Council to represent a general constituency, unless his name is registered on the electoral roll of the constituency, or of any other constituency in the province, and unless, in the case of a non-Muhammadan, Muhammadan, Indian Christian, European or Anglo-Indian constituency, he is himself a non-Muhammadan, Muhammadan, Indian Christian, European or Anglo-Indian, as the case may be.

(b) No person shall be eligible for election as a member of the Council to represent a special constituency, unless his name is registered on the electoral roll of the constituency.

(2) For the purposes of these rules

- (a) ‘general constituency’ means a non-Muhammadan, Muhammadan, Indian Christian, European or Anglo-Indian constituency ; and
- (b) ‘special constituency’ means a Landholders’, University, Planters’, or Commerce and Industry constituency.

### *Qualifications of Electors.*

VIII.—(1) The qualifications of an elector for a general constituency shall be such qualifications based on—

- (i) community,
- (ii) residence, and
- (iii)—(a) occupation of a house, or
- (b) assessment to property tax, tax on companies or profession tax, or
- (c) assessment to income tax, or
- (d) military service or
- (e) the holding of land,

as are specified in Schedule II to these rules in the case of that constituency.

(2) The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule II to these rules in the case of that constituency.

## SCHEDULE I

(See Rule IV.)

## I.—LIST OF CONSTITUENCIES

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>	<i>Re-served Seats.</i>
Madras City . .	Non-Muham- madan Urban	The city of Madras as defined in section 3 (9) of the Madras City Municipal Act, 1919, but including Fort St. George.	4	2
Madura City . .	Ditto	The municipality of Madura . . .	1	—
Trichinopoly cum Srirangam	Ditto	The municipalities of Trichinopoly and Srirangam.	1	—
Cocanada City . .	Ditto	The municipality of Cocanada . .	1	—
Vizagapatam City	Ditto	The municipality of Vizagapatam .	1	—
Tinnevelly cum Palamecottah	Ditto	The municipalities of Tinnevelly, and Palamecottah.	1	1
Anantpur . .	Non-Muham- madan Rural	The District of Anantpur . . .	2	1
Arcot (North) . .	Ditto	The District of North Arcot . . .	3	1
Arcot (South) . .	Ditto	The District of South Arcot . . .	3	1
Bellary . . .	Ditto	The District of Bellary . . .	2	1
Chingleput . . .	Ditto	The District of Chingleput . . .	2	1
Chittoor . . .	Ditto	The District of Chittoor . . .	2	1
Coimbatore . . .	Ditto	The District of Coimbatore . . .	3	1
Cuddapah . . .	Ditto	The District of Cuddapah . . .	2	1
Ganjam . . .	Ditto	The District and Agency of Ganjam	3	1
Godavari . . .	Ditto	The District and Agency of Godavari (excluding the municipality of Cocanada).	2	1
Guntur . . .	Ditto	The District of Guntur . . .	3	1
Kanara (South) . .	Ditto	The District of South Kanara . .	2	1
Kistna . . .	Ditto	The District of Kistna . . .	4	2
Kurnool . . .	Ditto	The District of Kurnool . . .	2	1
Madura District.	Ditto	The District of Madura, excluding the municipality of Madura.	3	1
Malabar cum Anjengo	Ditto	The Districts of Malabar and Anjengo.	2	1
Nellore . . .	Ditto	The District of Nellore . . .	2	1
Ramnada . . .	Ditto	The District of Ramnada . . .	2	1
Salem . . .	Ditto	The District of Salem . . .	2	1
Tanjore . . .	Ditto	The District of Tanjore . . .	3	1
Tinnevelly District	Ditto	The District of Tinnevelly, excluding the municipalities of Tinnevelly and Palamecottah.	2	1
Trichinopoly District	Ditto	The District of Trichinopoly, excluding the municipalities of Trichinopoly and Srirangam.	2	1
Vizagapatam District	Ditto	The District and Agency of Vizagapatam, excluding the municipality of Vizagapatam.	2	1
The Nilgiris . .	Ditto	The Nilgiris District . . .	1	1
Madras City (Muhammadan)	Muhammadan Urban	The city of Madras as defined in section 3 (9) of the Madras City Municipal Act, 1919, but including Fort St. George.	1	—
Madura and Trichinopoly cum Srirangam	Ditto	The municipalities of Madura, Trichinopoly, and Srirangam.	1	—
Northern Sirkars (Muhammadan)	Muhammadan Rural	The Districts and Agencies of Ganjam, Vizagapatam, and Godavari, and the District of Kistna.	1	—

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>	<i>Re-served Seats.</i>
East Coast (Muhammadan)	Muhammadan	The Districts of Guntur, Nellore, and Chittoor.	1	—
Coded Districts (Muhammadan)	Rural			
North Arcot <i>cum</i> Chingleput	Ditto	The Districts of Cuddapah, Kurnool, Bellary, and Anantpur.	1	—
Central District (Muhammadan)	Ditto	The Districts of North Arcot and Chingleput.	1	—
Tanjore (Muhammadan)	Ditto	The Districts of Salem, Coimbatore, the Nilgiris, and South Arcot.	1	—
Madura <i>cum</i> Trichinopoly (Muhammadan Rural)	Ditto	The District of Tanjore . . . .	1	—
Ramnad <i>cum</i> Tinnevely (Muhammadan)	Ditto	The District of Madura and Trichinopoly, excluding the municipalities of Madura, Trichinopoly, and Srirangam.	1	—
Malabar <i>cum</i> Anjengo (Muhammadan)	Ditto	The Districts of Ramnad and Tinnevely.	1	—
South Kanara .	Ditto	The Districts of Malabar and Anjengo.	2	—
Northern Districts (Christian)	Indian Christian	The District of South Kanara . .	1	—
Central Districts (Christian)	Ditto	The Districts and Agencies of Ganjam, Vizagapatam, and Godavari, and the Districts of Kistna, Guntur, and Nellore.	1	—
West Coast (Christian)	Ditto	The Districts of Cuddapah, Kurnool, Anantpur, Bellary, Chittoor, Chingleput, Madras, South Arcot, and North Arcot.	1	—
Tanjore and Trichinopoly <i>cum</i> Madura (Christian)	Ditto	The Districts of Salem, Coimbatore, the Nilgiris, Malabar, Anjengo, and South Kanara.	1	—
Ramnad <i>cum</i> Tinnevely (Christian)	Ditto	The Districts of Tanjore, Trichinopoly and Madura.	1	—
European . .	Ditto	The Districts of Ramnad and Tinnevely.	1	—
Anglo Indian .	European	The Districts of Madras Presidency . . . .	1	—
Northern Landholders, I	Anglo-Indian	Ditto	1	—
Northern Landholders, II	Landholders	The Districts and Agencies of Ganjam, and Vizagapatam.	1	—
North Central Landholders	Ditto	The District and Agency of Godavari, and the Districts of Kistna and Guntur.	1	—
South Central Landholders	Ditto	The Districts of Chittoor, Cuddapah, Kurnool, Bellary, Anantpur, Nellore, Madras, and Chingleput.	1	—
Southern Landholders.	Ditto	The Districts of Salem, Coimbatore, North Arcot, and South Arcot.	1	—
West Coast Landholders	Ditto	The Districts of Tanjore, Trichinopoly, Madura, Mammad, and Tinnevely.	1	—
Madras University	Ditto	The Districts of Malabar, Anjengo, South Kanara, and the Nilgiris.	1	—
Madras Planters	University	(Non-territorial)	1	—
Madras Chamber of Commerce	Planting	Ditto	1	—
Madras Trades Association	Commerce and Industry	Ditto	2	—
	Ditto	Ditto	1	—

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>	<i>Re- served Seats.</i>
Southern India Chamber of Commerce	Commerce and Industry	(Non-territorial)	1	—
Nattukkottai Nagarathas' Association	Ditto	Ditto	1	—

II. Seats shall be deemed to be reserved seats within the meaning of this Schedule for the purposes of an election if the number of non-Brahman members already representing the constituency is less than the number of seats specified as reserved seats, to the extent only of that deficiency :

Provided that, if the number of non-Brahman candidates at the date of the election is less than the number of reserved seats, the number of reserved seats shall be reduced to the extent of that deficiency.

## MADRAS.—SCHEDULE II

(See Rule VIII.)

### QUALIFICATIONS OF ELECTORS

#### *Definitions.*

#### 1. For the purposes of this Schedule—

(a) ' an Anglo-Indian ' means any person being a British subject and resident in British India,

(i) of European descent in the male line who is not a European, or

(ii) of mixed Asiatic and non-Asiatic descent, whose father, grandfather or more remote ancestor in the male line was born in the continent of Europe, Canada, Newfoundland, Australia, New Zealand, the Union of South Africa or the United States of America, and who is not a European ;

(b) ' a European ' means any person of European descent in the male line being a British subject and resident in British India, who either was born in or has a domicile in the United Kingdom or in any British Possession or in any State in India, or whose father was so born or has or had up to the date of the birth of the person in question such a domicile ;

(c) ' member ', in relation to a Chamber of Commerce or a planters' or traders' association, includes any person entitled to exercise the rights and privileges of membership on behalf of and in the name of any firm, company or corporation registered as a member ;

(d) ' previous year ' means the financial year preceding that in which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules ;

(e) ' zamindar ' means the holder of an estate.

(f) ' estate ' means :

(1) any permanently settled estate or temporarily settled Zamindari ;

(2) any portion of such permanently settled estate or temporarily settled Zamindari which is separately registered in the office of the collector ;

(3) any unsettled Palaiyam or Jagir ;

(4) any Inam village of which the grant has been confirmed or recognized by the British Government or any separated part of such village.



- (5) any portion, consisting of one or more villages, of any of the estates specified above in clause (1), (2), and (3) which is held on a permanent under-tenure.

(g) 'landholder' means a person owning an estate or part thereof, and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title, or of any orders of a competent Court, or of any provision of law.

(h) 'ryot' means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it.

*Revenue Accounts, &c., to be conclusive Evidence.*

2. For the purpose of determining any claim to a qualification under this Schedule, the entries in the land revenue accounts and *muchilakas* regarding the amounts of assessment, water rate and rent payable, and the entries in the municipal records regarding the amounts of taxes assessed or paid and the values of houses shall be conclusive evidence of the facts stated therein.

*GENERAL CONSTITUENCIES*

*Non-Muhammadan Constituencies (Urban and Rural).*

3. Every person not being a European, an Anglo-Indian, an Indian Christian, or a Muhammadan, shall be qualified as an elector for a non-Muhammadan constituency, who resided in the constituency for not less than 120 days in the previous year, and has the further qualifications hereinafter prescribed for an elector of the particular constituency.

*Urban—Madras City Constituency.*

4. A person shall be qualified as an elector for a Madras City constituency who—
- (a) was assessed in the previous year to property tax, or tax on companies or profession tax ; or
  - (b) occupied for not less than six months in the previous year a house in the city, not being a house in any military or police lines, of an annual value of not less than Rs.60 ; or
  - (c) was assessed in the previous year to income tax ; or
  - (d) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

*Explanation.*—No person shall be deemed to occupy a house within the meaning of clause (b) unless he is paying or is liable to pay to the owner the rent thereof, or is exempt from the payment of rent by virtue of any office, service or employment ; nor shall more than one person be qualified as an elector in respect of the same house.

*Urban Constituencies other than Madras.*

5. A person shall be qualified as an elector for an urban constituency other than a Madras city constituency who—

- (a) was assessed in the previous year to an aggregate amount of not less than Rs.3 in respect of one or more of the following taxes, namely, property tax, tax on companies, or profession tax ; or
- (b) holds within the constituency one of the qualifications in respect of the holding of land hereinafter prescribed for an elector of a rural constituency ; or
- (c) was assessed in the previous year to income tax ; or
- (d) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

*Rural Constituencies.*

6. A person shall be qualified as an elector for a rural constituency who—

- (a) is registered as a ryotwari pattadar, or as an inamdar of land the annual rent value of which is not less than Rs. 10, or
- (b) holds on a registered lease under a ryotwari pattadar or an inamdar land the annual rent value of which is not less than Rs. 10, or
- (c) is registered jointly with the proprietor under section 14 of the Malabar Land Registration Act, 1895, as the occupant of land, the annual rent value of which is not less than Rs. 10, or
- (d) is a landholder holding an estate, the annual rent value of which is not less than Rs. 10, or
- (e) holds as ryot, or as tenant under a landholder, land the annual rent value of which is not less than Rs. 10, or
- (f) was in the previous year assessed in a municipality included in the constituency to an aggregate amount of not less than Rs. 3 in respect of one or more of the following taxes, namely, property tax, tax on companies, or profession tax, or
- (g) was assessed in the previous year to income tax ; or
- (h) is a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

*Muhammadian Constituencies.*

7. A person shall be qualified as an elector for a Muhammadian constituency, urban or rural, who is a Muhammadian and resided in the constituency for not less than 120 days in the previous year and has any of the qualifications prescribed in this Schedule for an elector of a Madras City, other urban, or rural constituency, as the case may be.

*Indian Christian Constituencies.*

8. A person shall be qualified as an elector for an Indian Christian constituency who is an Indian Christian and resided in the constituency for not less than 120 days in the previous year and has any of the qualifications prescribed in this Schedule for an elector of any urban or rural constituency included in the area of such Indian Christian constituency.

*European and Anglo-Indian Constituencies.*

9. A person shall be qualified as an elector for the European constituency who is a European, and for the Anglo-Indian constituency who is an Anglo-Indian, if such European or Anglo-Indian resided in the Madras Presidency for not less than 120 days in the previous year and has any of the qualifications prescribed for an elector of any urban or rural constituency.

*Rental Value.*

10. For the purposes of this Schedule, the annual rent value of land shall be determined, in accordance with the provisions of section 79 of the Madras Local Boards Act, 1920, with reference to the accounts of the *fasli* year preceding the calendar year in which the electoral roll for the time being under preparation is first published under these rules, or, if the accounts for that year are not available, then with reference to the latest accounts that are available: provided that, if in any case it is not possible to calculate the rent value in accordance with the provisions of section 79 of the Madras Local Boards Act, 1920, the Registration Officer shall determine the value for the purpose of this Schedule upon the best information available.

*Joint Families.*

11. If property is held or payments are made jointly by the members of a joint family or by joint pattadars, the family or joint holding shall be adopted as the unit for deciding whether under this Schedule the requisite qualification exists ; and, if it does exist, the person qualified shall be the member authorized by a majority of the family or of the joint holders, or, in the case of a Hindu joint family, either a member so authorized or the manager thereof.

*Person not Qualified in both Personal and Representative Capacity.*

12. A person may be qualified either in his personal capacity or in the capacity of a representative of a joint family or of joint pattadars, but not in both capacities.

*Fiduciary Capacity not Recognized.*

13. Save as provided in paragraph 11 of this Schedule, no person shall be qualified as an elector in respect of any property unless he possesses the prescribed property qualification in his own personal right and not in a fiduciary capacity.

## SPECIAL CONSTITUENCIES

*Landholders' Constituencies.*

14. A person shall be qualified as an elector for a Landholders' constituency who is a zamindar, janmi or malikanadar, and resided in the constituency for not less than 120 days in the previous year and who—

- (a) possesses an annual income, calculated as provided in paragraphs 15, 16, and 17 of this Schedule, of not less than Rs. 3,000 derived from an estate within the Presidency of Madras, or
- (b) is registered as the janmi of land situated within the Presidency of Madras on which the assessment is not less than Rs. 1,500, or
- (c) receives from Government a malikana allowance the annual amount of which is not less than Rs. 3,000.

*Annual Income.*

15. For the purposes of paragraph 14 of this Schedule, the annual income of a zamindar shall be taken to be the annual rent value upon which the land-cess is calculated under the Madras Local Boards Act, 1920, excluding the jodi, quit-rent, peshkash or similar charge payable by him to Government.

*Method of Calculating Annual Income and Assessments.*

16. In calculating annual income and assessment for the purposes of paragraph 14 of this Schedule

- (a) income derived from an estate shall not be reckoned along with income derived from any land other than an estate, but it may be reckoned along with a malikana allowance ;
- (b) in no case shall income derived from a portion of an estate which is not separately registered in the office of a Collector be taken into account ;
- (c) assessments paid on more than one parcel of land may be reckoned together : provided that, in the case of land referred to in paragraphs 19 and 20 of this Schedule, the assessment paid thereon shall not be added to any assessment paid on other land unless the holder of the latter has been nominated or is entitled under those paragraphs to represent the joint holders or family in respect of the former land.

*Basis of Determination of Annual Rent Value and Assessment.*

17. For the purposes of paragraph 14 of this Schedule, the annual rent value and assessment shall be determined with reference to the accounts of the *fasli* year preceding the calendar year in which the electoral roll for the time being under preparation is first published under these rules or, if the accounts for that year are not available, with reference to the latest accounts that are available: provided that, if in any case it is not possible to calculate the rent value in accordance with the provisions of paragraph 16 of this Schedule, the Collector shall determine the value upon the best information available.

*Entry of Name in Land Register.*

18. Save as expressly provided in this Schedule, no person claiming to be qualified as an elector for a Landholders' constituency on account of the possession of income derived from land for which a public register is kept shall be entitled to have such income taken into account in determining his eligibility unless the land from which the income is derived stands registered in such register in his name.

*Joint Holders of Land.*

19. If several persons are registered as joint holders of land, a majority of the adult male persons so registered may nominate in writing any one of themselves who is not disqualified to be their representative for voting purposes, and the name of such representative alone shall be entered in the electoral roll and, if such nomination is not made, no entry shall be made in the roll in respect of such land.

*Explanation.*—Land registered under section 14 of the Malabar Land Registration Act, 1895, in the joint names of the registered proprietor and another person is not land registered in the names of joint holders within the meaning of this paragraph.

*Where Property is Entered in Name of a Woman.*

20. When the property of a tarwad or similar joint family under the Marumakkattayam law is registered in the name of a woman and would, but for the disqualification of sex, qualify the registered holder as an elector, the senior male member of the family who is not disqualified, or any member not disqualified who is nominated in writing by a majority of the adult male members, shall be qualified as the representative of the family.

*Fiduciary Capacity not Recognized.*

21. Save as hereinbefore provided, no person shall be qualified as an elector unless he possesses the prescribed property qualification in his own personal right and not in a fiduciary capacity.

*Election of Registration in Personal or Representative Capacity.*

22. A person who is nominated or qualified, under paragraph 19 or paragraph 20 of this Schedule, to represent a group of joint owners or a joint family, and who is himself possessed of a separate property qualification as an elector, may elect whether to be entered in the electoral roll in his representative or separate capacity, but he shall be entered in one such capacity only.

## OTHER SPECIAL CONSTITUENCIES

*The University Constituency.*

23. A person shall be qualified as an elector for the Madras University constituency if he has a place of residence in India and is a member of the Senate, or an Honorary Fellow, or a graduate of over seven years' standing of the University of Madras.

*The Planters' Constituency.*

24. A person shall be qualified as an elector for the Madras Planters' constituency if he is a member of one of the associations affiliated to the United Planters' Association of Southern India.

*The Madras Chamber of Commerce and Industry Constituency.*

25. A person shall be qualified as an elector for the Madras Chamber of Commerce constituency if he is a member of the Madras Chamber of Commerce or of a Chamber affiliated to it.

*Other Commerce Constituencies.*

26. Members of the Madras Trades Association, the Southern India Chamber of Commerce and the Nattukkottai Nagarathars' Association shall be qualified respectively as electors for the constituency comprising the Chamber or Association of which they are members.

## BOMBAY RULES

### *Composition of Legislative Council.*

III. The Legislative Council of the Governor of Bombay shall consist of—

- (1) The members of the Executive Council *ex-officio* ;
- (2) eighty-six elected members ; and
- (3) such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to twenty-five ; of the members so nominated—
  - (a) not more than sixteen may be officials, and
  - (b) five shall be non-official persons nominated to represent respectively the following classes or interests, namely :
    - (i) the Anglo-Indian community ;
    - (ii) the Indian Christian community ;
    - (iii) the labouring classes ;
    - (iv) classes which, in the opinion of the Governor, are depressed classes ; and
    - (v) the cotton trade.

### *Special Qualifications for Election in case of certain Constituencies.*

VI.—(1) No person shall be eligible for election as a Member of the Council to represent a general constituency, unless—

- (a) his name is registered on the electoral roll of the constituency or of any other constituency in the province ; and
- (b) he has for the period of six months immediately preceding the last date fixed for the nomination of candidates in the constituency, resided in the constituency or in a division any part of which is included in the constituency ;
- (c) in the case of a non-Muhammadan, Muhammadan or European constituency, he is himself a non-Muhammadan, Muhammadan, or European, as the case may be.

Provided that

- (i) for the purposes of clause (b), the City of Bombay shall be deemed to be a division, and
  - (ii) nothing in clause (b) shall be deemed to render ineligible for election any person who has held office as a Minister within the period of six months referred to in that clause.
- (2) No person shall be eligible for election as a member of the Council to represent a special constituency, unless his name is registered on the electoral roll of the constituency.
- (3) For the purposes of these rules—
- (a) ‘ general constituency ’ means a non-Muhammadan, Muhammadan, or European constituency ; and
  - (b) ‘ special constituency ’ means a Landholders’, University, or Commerce and Industry constituency.

### *Qualifications of Electors.*

VIII.—(1) The qualifications of an elector for a general constituency shall be such qualifications based on—

- (i) community,
- (ii) residence, and

- (iii)—(a) occupation of a building, or  
 (b) assessment to income tax, or  
 (c) military service, or  
 (d) the holding of land,

as are specified in Schedule II in the case of that constituency.

(2) The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule II in the case of that constituency.

## BOMBAY.—SCHEDULE I

(See Rule IV.)

### I.—LIST OF CONSTITUENCIES

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>	<i>Re-served Seats</i>
Bombay City (North)	Non-Muham- madan Urban	Municipal wards B, E, F, and G . .	3	1
Bombay City (South)	Ditto	Municipal wards A, C, and D . . .	3	—
Karachi City	Ditto	The municipal district of Karachi, the cantonments of Karachi and Manora and the limits of the Karachi Port Trust.	1	—
Ahmedabad City	Ditto	The municipal district of Ahmedabad, the cantonment of Ahmedabad and the notified areas of Kankaria, Asarwa, Ellis Bridge, and Sabarmati.	1	—
Surat City . .	Ditto	The municipal district of Surat . .	1	—
Sholapur City .	Ditto	The municipal district of Sholapur .	1	—
Poona City . .	Ditto	The municipal district of Poona, the suburban municipal district of Poona, and the cantonments of Poona and Kirkee.	1	—
Ahmedabad District	Non-Muham- madan Rural	The District of Ahmedabad, excluding the municipal district of Ahmedabad and the Ahmedabad cantonment and the notified areas of Kankaria, Asarwa, Ellis Bridge, and Sabarmati.	2	—
Broach District	Ditto	Broach District . . . . .	1	—
Kaira District	Ditto	Kaira District . . . . .	2	—
Panch Mahals District	Ditto	Panch Mahals District . . . . .	1	—
Surat District	Ditto	Surat District, excluding the municipal district of Surat.	2	—
Thana and Bombay Suburban Districts	Ditto	Thana and Bombay Suburban Districts.	2	1
Ahmednagar District	Ditto	Ahmednagar District . . . . .	2	1
East Khandesh District	Ditto	East Khandesh District . . . . .	3	—
Nasik District	Ditto	Nasik District . . . . .	2	1
Poona District	Ditto	Poona District, excluding the municipal district of Poona, the suburban municipal district of Poona, and the cantonments of Poona and Kirkee.	2	1
Satara District	Ditto	Satara District . . . . .	3	—
Belgaum District	Ditto	Belgaum District . . . . .	2	—
Bijapur District	Ditto	Bijapur District . . . . .	1	—
Dharwar District	Ditto	Dharwar District . . . . .	2	—

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>	<i>Re- served Seats.</i>
Kanara District	Non-Muham- madan Rural	Kanara District . . . . .	1	—
Ratnagiri Dis- trict	Ditto	Ratnagiri District . . . . .	2	1
Eastern Sind .	Ditto	Hyderabad, Thar and Parkar and Nawabshah Districts.	1	—
Western Sind .	Ditto	Karachi, Larkana, Sukkur, and the Upper Sind Frontier Districts, ex- cluding the municipal district of Karachi and the cantonments of Karachi and Kanora and the Port Trust limits.	1	—
Sholapur District	Ditto	Sholapur District, excluding the municipal district of Sholapur.	1	*
Kolaba District	Ditto	Kolaba District . . . . .	1	*
West Khandesh District	Ditto	West Khandesh District . . . . .	1	*
Bombay City (Muhammadan)	Muhammadan Urban.	The City of Bombay . . . . .	2	—
Karachi City (Muhammadan)	Ditto	The municipal district of Karachi and the cantonments of Karachi and Manora and the Port Trust limits.	1	—
Ahmedabad and Surat Cities (Muhammadan)	Ditto	The municipal districts of Ahmeda- bad and Surat and the canton- ment of Ahmedabad and the noti- fied areas of Kankaria, Asarwa, Ellis Bridge, and Sabarmati	1	—
Poona and Shola- pur Cities (Muhammadan)	Ditto	The municipal districts of Poona and Sholapur, the suburban muni- cipal district of Poona and the cantonments of Poona and Kirkee.	1	—
The Northern Division (Muhammadan)	Muhammadan Rural	The Ahmedabad, Kaira, Broach, Panch Mahals, Surat, Thana, and Bombay Suburban Districts, ex- cluding the municipal districts of Ahmedabad and Surat and the cantonment of Ahmedabad and the notified areas of Kankaria, Asarwa, Ellis Bridge, and Sabar- mati.	1	—
The Central Division (Muhammadan)	Ditto	The Districts of East and West Khandesh, Poona, Nasik, Satara, Sholapur, and Ahmednagar, ex- cluding the municipal districts of Poona and Sholapur, the subur- ban municipal district of Poona and the cantonments of Poona and Kirkee.	3	—
The Southern Division (Muhammadan)	Ditto	The Districts of Belgaum, Bijapur, Dharwar, Kanara, Kolaba, and Ratnagiri.	3	—
Hyderabad District (Muhammadan)	Ditto	The District of Hyderabad . . . .	2	—
Karachi District (Muhammadan)	Ditto	The District of Karachi, excluding the municipal district of Karachi and the cantonments of Karachi and Manora and the Karachi Trust limits.	2	—

\* \* The seats allotted to the Sholapur District, the Kolaba District, and the West Khandesh District constituencies are reserved for the purpose of all elections to the first, second, and third Council respectively under Part III of this Schedule and to succeeding Councils in the same rotation.



<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>	<i>Re- served Seats.</i>
Larkana District (Muhammadan)	Muhammadan Rural	The District of Larkana . . . .	3	—
Sukkur District (Muhammadan)	Ditto	The District of Sukkur . . . .	2	—
Thar and Parkar (Muhammadan)	Ditto	The Districts of Thar and Parkar .	2	—
Nawabshah District (Muhammadan)	Ditto	The District of Nawabshah . . .	1	—
Upper Sind Frontier District (Muhammadan)	Ditto	The District of the Upper Sind Frontier.	1	—
Bombay City (European)	European	The City of Bombay . . . . .	1	—
Presidency (European)	Ditto	The Presidency of Bombay (excluding the City of Bombay and Aden).	1	—
Deccan Sardars and Inamdars	Landholders	The Central and Southern Divisions	1	—
Gujarat Sardars and Inamdars	Ditto	The Northern Division . . . .	1	—
Jagirdars and Zamindars (Sind)	Ditto	The Province of Sind . . . . .	1	—
Bombay University	University	(Non-Territorial)	1	—
Bombay Chamber of Commerce	Commerce and Industry	Ditto	2	—
Karachi Chamber of Commerce	Ditto	Ditto	1	—
Bombay Trades Association	Ditto	Ditto	1	—
Bombay Mill-owners' Association	Ditto	Ditto	1	—
Ahmedabad Mill-owners' Association	Ditto	Ditto	1	—
Indian Merchants' Chamber and Bureau	Ditto	Ditto	1	—

II. In interpreting this Schedule references to a division, district, municipal district, notified area or cantonment shall be deemed to be references to the division, district, municipal district, notified area, or cantonment as constituted or defined for the time being under the Bombay Land Revenue Code, 1879, the Bombay District Municipal Act, 1901, or the Cantonments Act, 1910, as the case may be.

III. The seat allotted in this Schedule to the Sholapur district constituency shall, for the purpose of the general election to the first Council and of all by-elections occurring during the continuance of that Council, be a reserved seat, and the seat allotted to the Kolaba district constituency shall be a reserved seat for the purposes of the second Council and of all by-elections occurring during the continuance of that Council, and the seat allotted to the West Khandesh District constituency shall be a reserved seat for the purposes of the third Council and of all by-elections occurring during the continuance of that Council, and thereafter seats shall be reserved in those constituencies in the like rotation for the purpose of elections to succeeding Councils.

IV. No seat shall be deemed to be a reserved seat within the meaning of this Schedule for the purposes of any election if the constituency is already represented by a Mahratta member or if there is no Mahratta candidate.

## BOMBAY.—SCHEDULE II

(See Rule VIII.)

### QUALIFICATIONS OF ELECTORS

#### *Definitions.*

1. For the purposes of this Schedule—

- (a) ‘a European’ means every person of European descent in the male line being a British subject and resident in British India, who either was born in or has a domicile in the United Kingdom or in any British Possession or in any State in India, or whose father was so born or has or had up to the date of the birth of the person in question such a domicile;
- (b) ‘holder’ means a person lawfully in possession of land whether such possession is actual or not;
- (c) ‘publication of the electoral roll’ means the first publication under these rules of the electoral roll, or of the list of amendments thereto, as the case may be, for the time being under preparation;
- (d) ‘tenant’ means a lessee whether holding under an instrument or under an oral agreement, and includes a mortgagee of a tenant’s rights with possession.

### GENERAL CONSTITUENCIES

#### *Non-Muhammadan and Muhammadan Urban Constituencies.*

2. A person shall be qualified as an elector for a non-Muhammadan or Muhammadan urban constituency who is not a European and who, on the 1st day of April next preceding the date of publication of the electoral roll, had a place of residence within the constituency or, in the case of a Bombay City constituency, within the limits of the said city or within the limits of North Salsette Mahal or the South Salsette Taluqua, or, in the case of any other urban constituency, within two miles of the boundary thereof, and who—

(a) on the 1st day of April aforesaid occupied, as owner or tenant, in such constituency, a house or building, or part of a house or building separately occupied, as a dwelling or for the purpose of any trade, business or profession—

- (i) of which the annual rental value was not less than Rs. 120 in the case of a Bombay City constituency, and not less than Rs. 60 in the case of a Karachi City constituency, or
- (ii) in any other urban constituency, where any tax is based on the annual rental value of houses or buildings, of which the annual rental value was not less than Rs. 36; or, if no tax so based is levied, of which the capital value was not less than Rs. 1,500; or

(b) was assessed to income tax in the financial year preceding that in which the publication of the electoral roll takes place; or

(c) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty’s regular forces; or

(d) on the 1st day of January next preceding the date of publication of the electoral roll, held a qualification in respect of land within the constituency which, if held within the nearest rural constituency, would qualify him as an elector for such constituency.

Provided that

- (i) no person shall be qualified as an elector for a Muhammadan constituency who is not a Muhammadan, and
- (ii) no Muhammadan shall be qualified as an elector for a non-Muhammadan constituency.

*Non-Muhammadan and Muhammadan Rural Constituencies.*

3. A person shall be qualified as an elector for a non-Muhammadan or Muhammadan rural constituency who is not a European and who, on the 1st day of January next preceding the date of publication of the electoral roll, had a place of residence within the constituency or within a contiguous constituency of the same communal description, and who—

(a)—(i) in the case of any constituency in Sind, on the 1st day of January aforesaid held in his own right or occupied as a permanent tenant or as a lessee from Government alienated or unalienated land in such constituency on which, in any one of the five revenue years preceding the publication of the electoral roll, an assessment of not less than Rs. 16 land revenue in the Upper Sind Frontier District, and of not less than Rs. 32 land revenue elsewhere, has been paid or would have been paid if the land had not been alienated, or

(ii) in the case of any other constituency, on the 1st day of January aforesaid held in his own right or occupied as a tenant in such constituency alienated or unalienated land assessed at or of the assessable value of not less than Rs. 16 land revenue in the Panch Mahals or Ratnagiri districts and not less than Rs. 32 land revenue elsewhere; or

(b) on the 1st day of January aforesaid was the alienee of the right of Government to the payment of rent or land revenue, amounting to not less than Rs. 16 in the Panch Mahals or Ratnagiri or Upper Sind Frontier Districts and to not less than Rs. 32 elsewhere, leviable in respect of land so alienated and situate within the constituency, or was a khot or a sharer in a khoti village in the constituency or a sharer in a bhagdari or narvadari village in the constituency, responsible for the payment of Rs. 16 land revenue in the Panch Mahals or Ratnagiri or Upper Sind Frontier Districts and of not less than Rs. 32 land revenue elsewhere; or

(c) was assessed to income tax in the financial year preceding that in which the publication of the electoral roll takes place; or

(d) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular force; or

(e) in any municipal district, cantonment or notified area in the constituency, on the 1st day of April next preceding the date of publication of the electoral roll, occupied, as owner or tenant, a house or building, or part of a house or building separately occupied, as a dwelling or for the purpose of any trade, business or profession,

(i) of which the annual rental value was not less than Rs. 36 in a constituency in Sind; or

(ii) in any other constituency, if in such municipal district, cantonment or notified area a tax is based on the annual rental value of houses or buildings, of which the annual rental value was not less than Rs. 24 in the Panch Mahals or Ratnagiri Districts and not less than Rs. 36 elsewhere; or, if no tax so based is levied, of which the capital value was not less than Rs. 1,000 in the Panch Mahals and Ratnagiri Districts and not less than Rs. 1,500 elsewhere:

Provided that

- (1) No person who is not a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and
- (2) No Muhammadan shall be qualified as an elector for a non-Muhammadan constituency.

*European Constituencies.*

4.—(1) A person shall be qualified as an elector for the Bombay City (European) constituency who is a European and save in that respect has the qualification hereinbefore prescribed for an elector of a Bombay City constituency.

(2) A person shall be qualified as an elector for the Presidency (European) constituency who is a European and save in that respect has the qualification hereinbefore prescribed for an elector of an urban, other than a Bombay City, constituency or of a rural constituency according as he has a place of residence within an urban or rural constituency.

## SPECIAL CONSTITUENCIES

*Landholders' Constituencies.*

5.—(1) A person shall be qualified as an elector for the constituency of the Deccan Sardars and Inamdars whose name is entered in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 2363, dated the 23rd July 1867, or who, on the 1st day of January next preceding the date of publication of the electoral roll, was the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village situate within the constituency.

(2) A person shall be qualified as an elector for the constituency of the Gujarat Sardars and Inamdars whose name is entered in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 6265, dated the 21st September 1909, or who, on the 1st day of January next preceding the date of publication of the electoral roll, was the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village situate within the constituency, or was the sole holder on talukdari tenure of such a village.

(3) A person shall be qualified as an elector for the constituency of the Jagirdars and Zamindars (Sind) who is a jagirdar of the first or second class in Sind, or who in each of the three revenue years preceding the publication of the electoral roll has paid not less than Rs.1,000 land revenue on land situate in any district in Sind.

*University Constituency.*

6. A person shall be qualified as an elector for the Bombay University constituency who, on the 1st day of April next preceding the date of publication of the electoral roll, had a place of residence in the Bombay Presidency (excluding Aden) and was a member of the Senate or an Honorary Fellow of the University or a graduate of the University of seven years' standing.

*Commerce and Industry Constituencies.*

7. A person shall be qualified as an elector for a Commerce and Industry constituency whose name is entered in the list of members, for the time being in force, of the association forming such constituency, or who is entitled to exercise the rights and privileges of membership on behalf of and in the name of any firm or company or corporation entered in such lists of members.

## MISCELLANEOUS

*Joint Families.*

8. Where any property is held or occupied or payment is made or received jointly by the members of a joint family, the family shall be adopted as a unit for deciding whether under the provisions of this Schedule the requisite qualification exists; and, if it does exist, the manager of the family only shall be qualified as an elector in respect of such property or payment.

*Trustees.*

9. No person holding or occupying any property or making or receiving any payment in a fiduciary capacity shall be qualified as an elector for any constituency in respect of such property or payment.

*Rental and Capital Value.*

10. The value of any machinery, furniture or equipment contained in, or situate upon, any house or building shall not be included in estimating the rental or capital value of such house or building.

*Service Tenure.*

11. A person who occupies any dwelling-house, other than a house in any military or police lines, by virtue of any office, service or employment shall, if the dwelling-house is not inhabited by the person in whose service he is in such office, service or employment, be deemed to occupy the dwelling-house as a tenant.

*Unassessed Land.*

12. The average rate of assessment on assessed land in a village or, if there is no such land in the village, the average rate of assessment on assessed land in the nearest village containing such land shall be taken as the rate for calculating the assessable value of unassessed land in such village.

*Revenue, &c., Record conclusive Proof.*

13. For the purpose of deciding any claim to be registered in respect of any assessment, payment of rent or land revenue, rental value, capital value or payment of income tax, an entry in any revenue record or in the record of any municipal district or cantonment or notified area or in the records of the Municipal Corporation of the City of Bombay, stating the amount of such assessment, payment or value, shall be conclusive proof of the amount of such assessment, payment or value.

## BENGAL RULES

### *Composition of Legislative Council.*

III. The Legislative Council of the Governor of Bengal shall consist of—

- (1) the members of the Executive Council *ex-officio* ;
- (2) one hundred and fourteen elected members ;
- (3) such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to twenty-six ; of the members so nominated—
  - (a) not more than eighteen may be officials and not less than six shall be non-officials and
  - (b) two shall be persons nominated to represent respectively the following classes or interests, namely :
    - (i) the Indian Christian community, and
    - (ii) classes which, in the opinion of the Governor, are depressed classes ; and
  - (c) two shall be persons nominated to represent the labouring classes.

### *Special Qualifications for Election in case of certain Constituencies.*

VI.—(1) (a) No person shall be eligible for election as a member of the Council to represent a general constituency unless his name is registered on the electoral roll of the constituency, or of any other constituency in the province ; and unless, in the case of a non-Muhammadan, Muhammadan, European, or Anglo-Indian constituency, he is himself a non-Muhammadan, Muhammadan, European, or Anglo-Indian, as the case may be.

(b) No person shall be eligible for election as a member of the Council to represent a special constituency, unless his name is registered on the electoral roll of the constituency.

(2) For the purpose of these rules—

- (a) ‘general constituency’ means a non-Muhammadan, Muhammadan, European, or Anglo-Indian constituency ; and
- (b) ‘special constituency’ means a Landholders’, University, or Commerce and Industry constituency.

### *Qualifications of Electors.*

VIII.—(1) The qualifications of an elector for a general constituency shall be such qualifications based on—

- (i) community,
- (ii) residence, and
- (iii) (a) occupation of a building, or
- (b) payment of municipal or cantonment taxes or fees ; or
- (c) payment of cesses under the Cess Act, 1880, or
- (d) payment of chaukidari tax or union rate under the Village-Chaukidari Act, 1870, or the Bengal Village Self-Government Act, 1919, or
- (e) payment of income tax, or
- (f) military service, or
- (g) the holding of land,

as are specified in Schedule II in the case of that constituency.

(2) The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule II in the case of that constituency.

## BENGAL.—SCHEDULE I

(See Rule IV.)

## LIST OF CONSTITUENCIES

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Calcutta, North (Non-Muhammadan)	Non-Muham- madan Urban	The Shampukar, Kumartoli, and Bartola wards of Calcutta.	1
Calcutta, North-west (Non-Muhammadan)	Ditto	The Jora Bagan and Bara Bazar wards of Calcutta.	1
Calcutta, North-east (Non-Muhammadan)	Ditto	The Sukea's Street, Jorasanko, and Collootola wards of Calcutta.	1
Calcutta, North-Central (Non-Muhammadan)	Ditto	The Muchipara, Bow Bazar, Padopukar, and Waterloo Street wards of Calcutta.	1
Calcutta, South-Central (Non-Muhammadan)	Ditto	The Fenwick Bazar, Taltola, Kalinga, Park Street, Baman Bustee, Entally, and Baniapukar wards of Calcutta.	1
Calcutta, South (Non-Muhammadan)	Ditto	The Hastings, Ballyganj, and Tollyganj, Bhowanipur, Alipur, Ekbalpur, and Watganj wards of Calcutta.	1
Hooghly Municipal (Non-Muhammadan)	Ditto	The municipalities of the Hooghly District.	1
Howrah Municipal (Non-Muhammadan)	Ditto	The municipalities of the Howrah District.	1
24-Parganas Municipal, North (Non-Muhammadan)	Ditto	The municipalities and cantonments of the Barrackpore sub-division of the 24-Parganas District and the Cossipore-Chitpur municipality.	1
24-Parganas Municipal, South (Non-Muhammadan)	Ditto	The municipalities of the Sadar, Baraset, and Basirhat sub-divisions of the 24-Parganas District, excluding the municipality of Cossipore-Chitpur.	1
Dacca city (Non-Muhammadan)	Ditto	The municipality of Dacca . . .	1
Burdwan (Non-Muhammadan)	Non-Muham- madan Rural	The Burdwan District . . .	2
Birbhum (Non-Muhammadan)	Ditto	The Birbhum District . . .	1
Bankura, West (Non-Muhammadan)	Ditto	The Sadar sub-division of the Bankura District.	1
Bankura, East (Non-Muhammadan)	Ditto	The Vishnupur sub-division of the Bankura District.	1
Midnapore, North (Non-Muhammadan)	Ditto	The Ghatal and Sadar sub-divisions of the Midnapore District.	1
Midnapore, South (Non-Muhammadan)	Ditto	The Contai and Tamluk sub-divisions of the Midnapore District.	2
Hooghly <i>cum</i> Howrah Rural (Non-Muhammadan)	Ditto	The Hooghly and Howrah Districts, excluding municipal areas.	2
24-Parganas Rural, Central (Non-Muhammadan)	Ditto	The Sadar sub-division of the 24-Parganas District (excluding municipal and cantonment areas).	1
24-Parganas Rural, South (Non-Muhammadan)	Ditto	The Diamond Harbour sub-division of the 24-Parganas District.	1
24-Parganas Rural, North (Non-Muhammadan)	Ditto	The Baraset, Basirhat, and Barrackpore sub-divisions of the 24-Parganas District (excluding municipal and cantonment areas).	1

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Nadia (Non-Muham- madan)	Non-Muham- madan Rural	The Nadia District . . . . .	1
Murshidabad (Non-Mu- hammadan)	Ditto	The Murshidabad District . . . . .	1
Jessore, North (Non- Muhammadan)	Ditto	The Magura, Jhenida, and Bongaon sub-divisions of the Jessore Dis- trict.	1
Jessore, South (Non- Muhammadan)	Ditto	The Sadar and Narail sub-divisions of the Jessore District.	1
Khulna (Non-Muham- madan)	Ditto	The Khulna District . . . . .	1
Dacca Rural (Non-Mu- hammadan)	Ditto	The Dacca District (excluding the municipality of Dacca).	1
Mymensingh, West (Non-Muhammadan)	Ditto	The Jamalpur and Tangail sub- divisions of the Mymensingh Dis- trict.	1
Mymensingh, East (Non-Muhammadan)	Ditto	The Sadar, Kishoreganj, and Netra- kona sub-divisions of the Mymen- singh District.	1
Faridpur, North (Non- Muhammadan)	Ditto	The Sadar and Goalundo sub-divi- sions of the Faridpur District.	1
Faridpur, South (Non- Muhammadan)	Ditto	The Madaripur and Gopalganj sub- divisions of the Faridpur District.	1
Bakarganj, North (Non- Muhammadan)	Ditto	The Northern Sadar, Southern Sa- dar, and Bhola sub-divisions of the Bakarganj District.	1
Bakarganj, South (Non- Muhammadan)	Ditto	The Patuakhali and Pirojpur sub- divisions of the Bakarganj Dis- trict.	1
Chittagong (Non-Mu- hammadan)	Ditto	The Chittagong District . . . . .	1
Tippera (Non-Muham- madan)	Ditto	The Tippera District . . . . .	1
Noakhali (Non-Muham- madan)	Ditto	The Noakhali District . . . . .	1
Rajshahi (Non-Muham- madan)	Ditto	The Rajshahi District . . . . .	1
Dinajpur (Non-Muham- madan)	Ditto	The Dinajpur District . . . . .	1
Rangpur (Non-Muham- madan)	Ditto	The Rangpur District . . . . .	2
Bogra <i>cum</i> Pabna (Non- Muhammadan)	Ditto	The Bogra and Pabna Districts . .	1
Malda (Non-Muham- madan)	Ditto	The Malda District . . . . .	1
Jalpaiguri (Non-Mu- hammadan)	Ditto	The Jalpaiguri District . . . . .	1
Calcutta, North (Mu- hammadan)	Muhammadan Urban	The Shampukur, Kumartoli, Bar- tola, Sukea's Street, Jora Bagan, Jorasanko, Bara Bazar, Collootola, Muchipara, Bow Bazar, Padopu- kar, and Waterloo Street Wards of Calcutta.	1
Calcutta, South (Mu- hammadan)	Ditto	The Fenwick Bazar, Taltola, Ka- linga, Park Street, Baman Bustee, Hastings, Entally, Baniapukur, Ballyganj, and Tollyganj, Bho- wanipur, Alipur, Ekbalpur, and Watganj wards of Calcutta.	1
Hooghly <i>cum</i> Howrah Municipal (Muham- madan)	Ditto	The municipalities of the Hooghly and Howrah Districts.	1



<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Barrackpore Municipal (Muhammadian)	Muhammadian Urban	The municipalities and cantonments of the Barrackpore sub-division of the 24-Parganas District and the Cossipore-Chitpur municipality.	1
24-Parganas Municipal (Muhammadian)	Ditto	The municipalities of the Sadar, Baraset, and Basirhat sub-divisions of the 24-Parganas District, excluding the municipality of Cossipore-Chitpur.	1
Dacca City (Muhammadian)	Ditto	The municipality of Dacca . . .	1
Burdwan Division, North (Muhammadian)	Muhammadian Rural	The Districts of Burdwan, Birbhum, and Bankura.	1
Burdwan Division, South (Muhammadian)	Ditto	The Districts of Midnapore, Hooghly, and Howrah, excluding the municipalities of the Hooghly and Howrah Districts.	1
24-Parganas Rural (Muhammadian)	Ditto	The 24-Parganas District (excluding municipal and cantonment areas).	1
Nadia (Muhammadian)	Ditto	Nadia District. . . . .	1
Murshidabad (Muhammadian)	Ditto	Murshidabad District. . . . .	1
Jessore, North (Muhammadian)	Ditto	The Jhendia and Magura sub-divisions of the Jessore District.	1
Jessore, South (Muhammadian)	Ditto	The Sadar, Bongaon, and Narail sub-divisions of the Jessore District.	1
Khulna (Muhammadian)	Ditto	Khulna District . . . . .	1
Dacca, East, Rural (Muhammadian)	Ditto	The Sadar and Narayanganj sub-divisions of the Dacca District, excluding the Dacca municipality.	1
Dacca, West, Rural (Muhammadian)	Ditto	The Munshiganj and Manikganj sub-divisions of the Dacca District.	1
Mymensingh, West (Muhammadian)	Ditto	The Jamalpur and Tangail sub-divisions of the Mymensingh District.	2
Mymensingh, East (Muhammadian)	Ditto	The Sadar, Kishoreganj, and Netrakona sub-divisions of the Mymensingh District.	2
Faridpur, North (Muhammadian)	Ditto	The Sadar and Goalundo sub-divisions of the Faridpur District.	1
Faridpur, South (Muhammadian)	Ditto	The Madaripur and Gopalganj sub-divisions of the Faridpur District.	1
Bakarganj, North (Muhammadian)	Ditto	The Northern Sadar and Bhola sub-divisions of the Bakarganj District.	1
Bakarganj, West (Muhammadian)	Ditto	The Southern Sadar and Pirojpur sub-divisions of the Bakarganj District.	1
Bakarganj, South (Muhammadian)	Ditto	The Patuakhali sub-division of the Bakarganj District.	1
Chittagong (Muhammadian)	Ditto	Chittagong District . . . . .	2
Tippera (Muhammadian)	Ditto	Tippera District . . . . .	2
Noakhali (Muhammadian)	Ditto	Noakhali District . . . . .	2
Rajshahi, North (Muhammadian)	Ditto	The Natore and Naogaon sub-divisions of the Rajshahi District.	1
Rajshahi, South (Muhammadian)	Ditto	The Sadar sub-division of the Rajshahi District.	1

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Dinajpur (Muhamma- dan)	Muhammadan	Dinajpur District . . . . .	1
Rangpur, West (Mu- hammadan)	Ditto	The Sadar and Nilphamari sub- divisions of the Rangpur District	1
Rangpur, East (Mu- hammadan)	Ditto	The Gaibandha and Kurigram sub- division of the Rangpur District.	1
Bogra (Muhamma- dan)	Ditto	Bogra District . . . . .	1
Pabna (Muhammadan)	Ditto	Pabna District . . . . .	1
Malda <i>cum</i> Jalpaiguri (Muhammadan)	Ditto	The Districts of Malda and Jalpai- guri.	1
Presidency and Burd- wan (European)	European	The Presidency and Burdwan Divi- sions.	3
Dacca and Chittagong (European)	Ditto	The Divisions of Dacca and Chitta- gong, excluding the Chittagong Hill Tracts.	1
Rajshahi (European) .	Ditto	The Division of Rajshahi, excluding the District of Darjeeling.	1
Anglo-Indian . . .	Anglo-Indian	The Presidency of Bengal, excluding the District of Darjeeling and the Chittagong Hill Tracts.	2
Burdwan Landholders	Landholders	The Burdwan Division . . . . .	1
Presidency Landholders	Ditto	The Presidency Division . . . . .	1
Dacca Landholders . .	Ditto	The Dacca Division . . . . .	1
Chittagong Landholders	Ditto	The Chittagong Division, excluding the Chittagong Hill Tracts.	1
Rajshahi Landholders	Ditto	The Rajshahi Division, excluding the District of Darjeeling.	1
Calcutta University .	University	(Non-territorial) . . . . .	1
Dacca University . . .	Ditto	Ditto	1
Bengal Chamber of Commerce	Commerce and Industry	Ditto	6
Indian Jute Mills Asso- ciation	Ditto	Ditto	2
Indian Tea Association	Ditto	Ditto	1
Indian Mining Associa- tion	Ditto	Ditto	1
Calcutta Trades Asso- ciation	Ditto	Ditto	1
Bengal National Cham- ber of Commerce	Ditto	Ditto	2
Bengal Marwari Asso- ciation	Ditto	Ditto	1
Bengal Mahajan Sabha	Ditto	Ditto	1

## BENGAL.—SCHEDULE II

(See Rule VIII.)

## QUALIFICATIONS OF ELECTORS.

*Definitions.*

## 1. For the purposes of this Schedule—

(a) 'an Anglo-Indian' means any person being a British subject and resident in British India,

(i) of European descent in the male line who is not a European, or

(ii) of mixed Asiatic and non-Asiatic descent whose father, grandfather, or more remote ancestor in the male line was born in the continent of Europe, Canada, Newfoundland, Australia, New Zealand, the Union

of South Africa, or the United States of America, and who is not a European ;

(b) ' a European ' means any person of European descent in the male line, being a British subject and resident in British India, who either was born in or has a domicile in the United Kingdom or in any British Possession or in any State in India, or whose father was so born or has or had up to the date of the birth of the person in question such a domicile ;

(c) ' previous year ' means the financial year preceding that in which the electoral roll, or the list of amendments thereto, as the case may be, for the time being under preparation is first published under these rules.

#### GENERAL CONSTITUENCIES

##### *Qualifications based on Community.*

2. A person shall be qualified as an elector—

(a) for a non-Muhammadan constituency who is neither a Muhammadan nor a European nor an Anglo-Indian, and

(b) for a Muhammadan, European, or Anglo-Indian constituency according as he is a Muhammadan, European, or Anglo-Indian :

Provided that such person possesses the further qualifications hereinafter prescribed for an elector of the particular constituency.

##### *Urban and Rural Constituencies other than Calcutta Constituencies.*

3. Subject to the provisions of paragraph 2 of this Schedule, a person shall be qualified as an elector for an urban or rural constituency, other than a Calcutta constituency, who has a place of residence in the constituency, and who—

(1) has paid, during and in respect of the previous year, or, as the case may be, during and in respect of the Bengali year preceding that in which the electoral roll for the time being under preparation is first published under these rules,

(a) in the municipalities of Howrah or Cossipore-Chitpur, municipal taxes or fees of not less than Rs. 3 or in any other municipal or cantonment area, municipal or cantonment taxes or fees of not less than Rs. 1.8.0, or

(b) road and public work cesses under the Cess Act, 1880, of not less than Re. 1, or

(c) chaukidari tax under the Village-Chaukidari Act, 1870, or union rate under the Bengal Village Self-Government Act, 1919, of not less than Rs. 2, or

(2) was in the previous year assessed to income tax, or

(3) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

##### *Calcutta Constituencies.*

4. Subject to the provisions of paragraph 2 of this Schedule, a person shall be qualified as an elector for a Calcutta constituency who has a place of residence therein, or who, having a place of residence in Calcutta as defined in section 3 (7) of the Calcutta Municipal Act, 1899, has a place of business within the constituency, and who—

(1) during the previous year

(i) was entered in the municipal assessment book as

(a) the owner and occupier of some land or building in Calcutta separately numbered and valued for assessment purposes at not less than Rs. 150 per annum ; or

(b) the owner or occupier of some land or building in Calcutta separately numbered and valued for assessment purposes at not less than Rs. 300 per annum :

Provided that no person shall be qualified in virtue of any of the above qualifications unless the owner and occupier's share, or the owner's or occupier's share, as the case may be, of the consolidated rate on such land or building for the aforesaid year has been paid during that year ; or,

- (ii) has paid in respect of that year on his sole account and in his own name not less than Rs. 24 either in respect of the consolidated rate levied under Chapter XII, or in respect of the taxes levied under Chapter XIII or in respect of the taxes levied under Chapter XIV of the Calcutta Municipal Act, 1899 : provided that if any payment has been made in respect of the consolidated rate, a person shall be qualified only if his name is entered in the municipal assessment book in respect of the holding for which payment was made ; or
- (2) (a) was in the previous year assessed to income tax, or
  - (b) is a member of firm which in the previous year was assessed to income tax and whose share of the firm's income, on which income tax was so assessed, is certified by an income-tax officer in a certificate specifying the names and shares of the partners of the firm to have been not less than the minimum on which the tax is leviable, or,
- (3) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

#### *European Constituencies.*

5. Subject to the provisions of paragraph 2 of this Schedule, a person shall be qualified as an elector for a European constituency who has a place of residence in the constituency and has any of the qualifications prescribed for an elector of any urban or rural constituency included in the area of such European constituency.

#### *The Anglo-Indian Constituency.*

6. Subject to the provisions of paragraph 2 of this Schedule, a person shall be qualified as an elector in the Anglo-Indian constituency who has a place of residence in Bengal and has any of the qualifications prescribed for an elector of any urban or rural constituency.

#### *Joint Families.*

7. Where property is held or payments are made jointly by the members of a joint family, the family shall be adopted as the unit for deciding whether under this Schedule the requisite qualification exists ; and, if it does exist, the person qualified shall be the manager of the family.

#### *Fiduciary Capacity.*

8. A person shall not be qualified as an elector for a general constituency by virtue of any property held or payment made as a trustee, administrator, receiver, or guardian or in any other fiduciary capacity.

### SPECIAL CONSTITUENCIES

#### *Landholders' Constituency.*

9. A person shall be qualified as an elector of a Landholders' constituency who has a place of residence in the constituency, and who during the previous year—

- (a) in the case of the Burdwan Landholders' and Presidency Landholders' constituencies, held in his own right as a proprietor one or more estates or shares of estates and paid in respect thereof land revenue amounting to not less than Rs. 4,500, or road and public works cesses amounting to not less than Rs. 1,125, or,
- (b) in the case of the Dacca Landholders', the Rajshahi Landholders', and the Chittagong Landholders' constituencies, held in his own right as proprietor one or more estates or shares of estates, or one or more permanent tenures or shares of such tenures held direct from such a proprietor, and paid in respect thereof land revenue amounting to not less than Rs. 3,000 or road and public works cesses amounting to not less than Rs. 750.

*Determination of Qualification.*

10. In determining the qualification of a person as an elector for a Landholders' constituency—

- (a) only such estates and shares of estates and only such permanent tenures and shares of permanent tenures as are not within the district of Darjeeling or the Chittagong Hill Tracts shall be taken into account ;
- (b) only such estates and shares of estates as are held by him in his own right and not in a fiduciary capacity, and are registered in his own name in the registers maintained under the Land Registration Act, 1876, shall be taken into account ;
- (c) only such permanent tenures and shares of permanent tenures as are held by him (as owner) in his own right and not in a fiduciary capacity shall be taken into account ;
- (d) only land revenue or road and public works cesses payable in respect of his own personal share shall be taken into account ;
- (e) if a landholder pays land revenue or cesses in two or more constituencies, and his payments in no one of these constituencies reach the amount prescribed for that constituency, and if his payments in all the constituencies, when aggregated, are not less than the amount prescribed for one of these constituencies in which he has a place of residence and pays land revenue or cesses, he shall be qualified as an elector for that constituency, or, if there is more than one such constituency, for the constituency in which he makes the largest payment ;
- (f) if the amount of land revenue or road and public works cesses paid by a landholder in respect of any share of an estate or permanent tenure is not definitely known, the District Officer of the district in which such estate or tenure is situated shall estimate the amount paid in respect of such share, and his decision shall be final.

*Explanation.*—A *mutwalli* or manager of a *wakf* estate shall be deemed to hold such estate in his own right, but a trustee or manager of an estate other than a *wakf* estate shall not be so deemed.

*Calcutta University Constituency.*

11. A person shall be qualified as an elector for the Calcutta University constituency who has a place of residence in Bengal and is a Member of the Senate or an Honorary Fellow of the University, or a graduate of the University of not less than seven years' standing.

*Dacca University Constituency.*

12. A person shall be qualified as an elector for the Dacca University constituency who—

- (1) has a place of residence in Bengal and is a member of the Court or a registered graduate of the University, or
- (2) has a place of residence in the Dacca Division or in the Chittagong Division, and would be qualified to be registered as a graduate of the University, if he had not before the 1st April 1920 been registered as a graduate of any other Indian University.

*Commerce and Industry Constituencies.*

13.—(1) Chamber members of the Bengal Chamber of Commerce and permanent members of the Indian Jute Mills Association, and of the Indian Tea Association, and of the Indian Mining Association shall be qualified respectively as electors for the constituency comprising the Chamber or Association of which they are such members: provided that no person shall be so qualified who has not a place of residence in India.

*Explanation.*—‘Chamber member’ and ‘permanent member’ include any person entitled to exercise the rights and privileges of Chamber membership or permanent membership, as the case may be, on behalf of any firm, company, or other corporation registered as such member.

(2) Members of the Calcutta Trades Association, life and ordinary members of the Bengal National Chamber of Commerce, life and ordinary members of the Bengal Mahajan Sabha, and life, ordinary and mufassal members of the Marwari Association, Calcutta, shall be qualified respectively as electors for the constituency comprising the Association, Chamber, or Sabha of which they are such members: provided that no person shall be so qualified who has not a place of residence in India.

*Explanation.*—‘Member’, ‘life member’, ‘ordinary member’, and ‘mufassal member’ include—

- (a) in the case of a firm, any one partner in the firm, or, if no such partner is present in Calcutta at the date fixed for the election, any one person empowered to sign for such firm, and
- b) in the case of a company or other corporation any one manager, director, or secretary of the company or corporation.

## UNITED PROVINCES RULES

### *Composition of Legislative Council.*

III. The Legislative Council of the Governor of the United Provinces of Agra and Oudh shall consist of—

- (1) the members of the Executive Council, *ex-officio* ;
- (2) one hundred elected members ; and
- (3) such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to twenty-three ; of the members so nominated—
  - (a) not more than sixteen may be officials, and
  - (b) three shall be persons nominated to represent respectively the following classes or interests, namely :
    - (i) the Anglo-Indian community ;
    - (ii) the Indian Christian community ; and
    - (iii) classes which in the opinion of the Governor are depressed classes.

### *Special Qualifications for Election in case of certain Constituencies.*

VI.—(1) (a) No person shall be eligible for election as a member of the Council to represent a general constituency (other than the European constituency), unless his name is registered on the electoral roll of the constituency, or of any other constituency in the province (other than the European constituency).

(b) No person shall be eligible for election as a member of the Council to represent a special constituency, or the European Constituency, unless his name is registered on the electoral roll of the constituency.

(2) For the purposes of these rules—

- (a) 'general constituency' means a non-Muhammadan, Muhammadan or European constituency ;
- (b) 'special constituency' means a Taluqdars', Agra Landholders', University, or Commerce and Industry constituency.

### *Qualifications of Electors.*

VIII.—(1) The qualifications of an elector for a general constituency shall be such qualifications based on—

- (i) community,
- (ii) residence, and
- (iii)—(a) ownership or tenancy of a building, or
- (b) assessment to municipal tax, or
- (c) assessment to income tax, or
- (d) military service, or
- (e) the holding of land,

as are specified in Schedule II in the case of that constituency.

(2) The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule II in the case of that constituency.

## UNITED PROVINCES.—SCHEDULE I

(See Rule IV.)

## LIST OF CONSTITUENCIES

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem. bers.</i>
Agra City . . . .	Non-Muham- madan Urban	The municipality and cantonment of Agra.	1
Cawnpore City . . .	Ditto	The municipality and cantonment of Cawnpore.	1
Allahabad City . . .	Ditto	The municipality and cantonment of Allahabad.	1
Lucknow City . . . .	Ditto	The municipality and cantonment of Lucknow.	1
Benares City . . . .	Ditto	The municipality and cantonment of Benares.	1
Bareilly City . . . .	Ditto	The municipality and cantonment of Bareilly.	1
Meerut cum Aligarh .	Ditto	The municipality and cantonment of Meerut and the municipality of Aligarh.	1
Moradabad cum Shah- jahanpur	Ditto	The municipality of Moradabad and the municipality and cantonment of Shahjahanpur.	1
Dehra Dun District.	Non-Muham- madan Rural	Dehra Dun District . . . . .	1
Saharanpur District .	Ditto	Saharanpur District . . . . .	1
Muzaffarnagar District	Ditto	Muzaffarnagar District . . . . .	1
Meerut District (North)	Ditto	The Tahsils of Mawana, Baghpat, and Sardhana.	1
Meerut District (South)	Ditto	The Tahsils of Hapur, Ghaziabad, and Meerut (excluding the municipality and cantonment of Meerut).	1
Bulandshahr District (East)	Ditto	The Tahsils of Bulandshahr and Anupshahr.	1
Bulandshahr District (West)	Ditto	The Tahsils of Khurja and Sikandra- bad.	1
Aligarh District (East)	Ditto	The Tahsils of Aligarh (excluding the municipality of Aligarh), Atrouli, and Sikandra Rao.	1
Aligarh District (West)	Ditto	The Tahsils of Hathras, Iglas, and Khair.	1
Muttra District . . .	Ditto	Muttra District . . . . .	1
Agra District . . . .	Ditto	Agra District (excluding the municipality and cantonment of Agra).	1
Mainpuri District . .	Ditto	Mainpuri District . . . . .	1
Etah District . . . .	Ditto	Etah District . . . . .	1
Bareilly District . . .	Ditto	Bareilly District (excluding the municipality and cantonment of Bareilly).	1
Bijnor District . . . .	Ditto	Bijnor District . . . . .	1
Budaun District . . .	Ditto	Budaun District . . . . .	1
Moradabad District .	Ditto	Moradabad District (excluding the municipality of Moradabad).	1
Shahjahanpur District .	Ditto	Shahjahanpur District (excluding the municipality and cantonment of Shahjahanpur).	1
Pilibhit District . . .	Ditto	Pilibhit District . . . . .	1
Jhansi District . . . .	Ditto	Jhansi District . . . . .	1
Jalaun District . . . .	Ditto	Jalaun District . . . . .	1
Hamirpur District . . .	Ditto	Hamirpur District . . . . .	1
Banda District . . . .	Ditto	Banda District . . . . .	1
Farrukabad District .	Ditto	Farrukabad District . . . . .	1



<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No of Mem- bers.</i>
Etawah District . .	Non-Muham- madan Rural	Etawah District . . . . .	1
Cawnpore District . .	Ditto	Cawnpore District (excluding the municipality and cantonment of Cawnpore).	1
Fatehpur District . .	Ditto	Fatehpur District . . . . .	1
Allahabad District . .	Ditto	Allahabad District (excluding the municipality and cantonment of Allahabad).	1
Benares District . .	Ditto	Benares District (excluding the municipality and cantonment of Benares).	1
Mirzapur District . .	Ditto	Mirzapur District . . . . .	1
Jaunpur District . .	Ditto	Jaunpur District . . . . .	1
Ghazipur District . .	Ditto	Ghazipur District . . . . .	1
Ballia District . . .	Ditto	Ballia District . . . . .	1
Gorakhpur District (West)	Ditto	The Sadr Maharajgunj and Bans- gaon Tahsils.	1
Gorakhpur District (East)	Ditto	The Padrauna, Hata, and Deoria Tahsils.	1
Basti District . . .	Ditto	Basti District . . . . .	1
Azamgarh District . .	Ditto	Azamgarh District . . . . .	1
Naini Tal District . .	Ditto	Naini Tal District . . . . .	1
Almora District . . .	Ditto	Almora District . . . . .	1
Garhwal District . .	Ditto	Garhwal District . . . . .	1
Lucknow District . .	Ditto	Lucknow District (excluding the municipality and cantonment of Lucknow).	1
Unao District . . .	Ditto	Unao District . . . . .	1
Rae Bareli District . .	Ditto	Rae Bareli District . . . . .	1
Sitapur District . . .	Ditto	Sitapur District . . . . .	1
Hardoi District . . .	Ditto	Hardoi District . . . . .	1
Kheri District . . .	Ditto	Kheri District . . . . .	1
Fyzabad District . .	Ditto	Fyzabad District . . . . .	1
Gonda District . . .	Ditto	Gonda District . . . . .	1
Bahraich District . .	Ditto	Bahraich District . . . . .	1
Sultanpur District . .	Ditto	Sultanpur District . . . . .	1
Partabgarh District . .	Ditto	Partabgarh District . . . . .	1
Bara Banki District . .	Ditto	Bara Banki District . . . . .	1
Allahabad cum Benares	Muhammadan	The municipalities and cantonments of Allahabad and Benares.	1
Lucknow cum Cawnpore	Urban	The municipalities and cantonments of Lucknow and Cawnpore.	1
Agra and Meerut cum Aligarh	Ditto	The municipalities and cantonments of Agra and Meerut and the muni- cipality of Aligarh.	1
Bareilly and Shahjahan- pur cum Moradabad	Ditto	The municipalities and cantonments of Bareilly and Shahjahanpur and the municipality of Moradabad.	1
Dehra Dun District (Muhammadan)	Muhammadan	Dehra Dun District and the Roor- kee Tahsil of the Saharanpur Dis- trict.	1
Saharanpur District (Muhammadan)	Rural	Saharanpur District (excluding the Roorkee Tahsil).	1
Meerut District (Mu- hammadan)	Ditto	Meerut District (excluding the mu- nicipality and cantonment of Meerut).	1
Muzaffarnagar District (Muhammadan)	Ditto	Muzaffarnagar District . . . . .	1
Bijnor District (Mu- hammadan)	Ditto	Bijnor District . . . . .	1
Bulandshahr District (Muhammadan)	Ditto	Bulandshahr District . . . . .	1
Aligarh, Muttra, and Agra Districts (Mu- hammadan)	Ditto	The Districts of Aligarh (excluding the municipality of Aligarh), Mut- tra and Agra (excluding the muni- cipality and cantonment of Agra).	1

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Mainpuri, Etah, and Farrukhabad Districts (Muhammadian)	Muhammadian Rural	The Districts of Mainpuri, Etah, and Farrukhabad.	1
Etawah, Cawnpore, and Fatehpur Districts (Muhammadian)	Ditto	The Districts of Etawah, Cawnpore, and Fatehpur (excluding the municipality and cantonment of Cawnpore).	1
Jhansi Division (Muhammadian)	Ditto	The Districts of Jhansi, Jalaun, Hamirpur, and Banda.	1
Allahabad, Jaunpur, and Mirzapur Districts (Muhammadian)	Ditto	The Districts of Allahabad, Jaunpur and Mirzapur (excluding the municipality and cantonment of Allahabad).	1
Benares, Ghazipur, Ballia, and Azamgarh Districts (Muhammadian)	Ditto	The Districts of Benares, Ghazipur, Ballia, and Azamgarh (excluding the municipality and cantonment of Benares).	1
Gorakhpur District (Muhammadian)	Ditto	Gorakhpur District . . . . .	1
Basti District (Muhammadian)	Ditto	Basti District . . . . .	1
North Moradabad (Muhammadian)	Ditto	The Tahsils of Moradabad (excluding the municipality of Moradabad), Thakurdwara, and Amroha.	1
South Moradabad (Muhammadian)	Ditto	The Tahsils of Hasanpur, Sambhal, and Bilari.	1
Budaun District (Muhammadian)	Ditto	Budaun District . . . . .	1
Shahjahanpur District (Muhammadian)	Ditto	Shahjahanpur District (excluding the municipality and cantonment of Shahjahanpur).	1
Bareilly District (Muhammadian)	Ditto	Bareilly District (excluding the municipality and cantonment of Bareilly).	1
Kumaun Division cum Pilibhit (Muhammadian)	Ditto	The Districts of Pilibhit, Naini Tal, Almora, and Garhwal.	1
Gonda and Bahraich Districts (Muhammadian)	Ditto	The Districts of Gonda and Bahraich.	1
Kheri and Sitapur Districts (Muhammadian)	Ditto	The Districts of Kheri and Sitapur .	1
Hardoi, Lucknow, and Unao Districts (Muhammadian)	Ditto	The Districts of Hardoi, Lucknow, and Unao (excluding the municipality and cantonment of Lucknow).	1
Fyzabad and Bara Banki Districts (Muhammadian)	Ditto	The Districts of Fyzabad and Bara Banki.	1
Sultanpur, Partabgarh, and Rae Bareilly Districts (Muhammadian)	Ditto	The Districts of Sultanpur, Partabgarh and Rae Bareilly.	1
European . . . . .	European	The United Provinces of Agra and Oudh.	1
Agra landholders (North)	Landholders	The Agra, Meerut, Rohilkhand, and Kumaun Divisions.	1
Agra landholders (South)	Ditto	The Jhansi, Allahabad, Gorakhpur, and Benares Divisions.	1
Taluqdars . . . . .	Ditto	(Non-territorial) . . . . .	4
Upper India Chamber of Commerce	Commerce and Industry	Ditto	2
United Provinces Chamber of Commerce	Ditto	Ditto	1
Allahabad University .	University	Ditto	1

## UNITED PROVINCES.—SCHEDULE II

(See Rule VIII.)

## QUALIFICATIONS OF ELECTORS

*Definitions.*

## 1. In this Schedule—

- (a) 'a European' means every person of European descent in the male line, being a British subject and resident in British India, who either was born in or has a domicile in the United Kingdom or in any British Possession or in any State in India, or whose father was so born or has or had up to the date of the birth of the person in question such a domicile ;
- (b) 'municipal record' means a record prepared under the provisions of the United Provinces Municipalities Act, 1916, the United Provinces Town Areas Act, 1914, or the Cantonments Act, 1910 ;
- (c) 'municipal tax' means a tax imposed under the provisions of the United Provinces Municipalities Act, 1916, the United Provinces Town Areas Act, 1914, or the Cantonments Act, 1910 ;
- (d) 'owner' does not include a mortgagee, a trustee, or a lessee ;
- (e) 'previous year' means the financial year preceding that in which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules ;
- (f) 'urban area' means a municipality or notified area as defined in the United Provinces Municipalities Act, 1916, or a town area as defined in the United Provinces Town Areas Act, 1914, or a cantonment as defined in the Cantonments Act, 1910.

*Joint Families and Tenancies.*

2.—(1) Where property is held or payments are made jointly by the members of a joint family or joint tenancy, the family or tenancy shall be adopted as the unit for deciding whether under this Schedule the requisite qualification exists ; and, if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof or the member nominated in that behalf by a majority of the family, and in other cases the member nominated in that behalf by the family or tenancy concerned.

(2) No person shall be qualified as an elector as a representative of more than one joint tenancy.

(3) A person may be qualified either in his personal capacity or in the capacity of a representative of a joint family or joint tenancy but not in both capacities.

*Occupation of House.*

3. Any person who occupies a house, other than a house in any military or police lines, by virtue of any office, service, or employment shall, if the house is not inhabited by the person in whose service or employment he is, be deemed to occupy the house as a tenant.

*Residence.*

4. A person shall be deemed to have a place of residence within the limits of a constituency if he—

- (a) ordinarily lives within those limits, or
- (b) maintains within those limits a dwelling-house ready for occupation and occasionally occupies it.

*Explanation.*—A person may have a place of residence within the limits of more than one constituency at the same time.

*Land Revenue and Municipal Records conclusive Evidence.*

5. For the purpose of determining any claim to a qualification under this Schedule, the entries contained in land revenue and municipal records shall be conclusive evidence of the facts stated therein.

## GENERAL CONSTITUENCIES

*Qualifications based on Community.*

6. A person shall be qualified as an elector—

- (a) for a non-Muhammadan constituency who is neither a European nor a Muhammadan,
- (b) for a Muhammadan constituency who is a Muhammadan, and
- (c) for the European constituency who is a European :

Provided that such person possesses the further qualifications hereinafter prescribed for an elector of the particular constituency.

*Urban Constituencies.*

7. Subject to the provisions of paragraph 6 of this Schedule, a person shall be qualified as an elector for an urban constituency who—

(1) has a place of residence in the constituency or within two miles of the boundary thereof, and

(a) is, in any place in the area aforesaid in which a house or building tax is in force, the owner or tenant of a house or building of which the rental value is not less than Rs. 36 per annum ; or

(b) was, in any area in the constituency in which no house or building tax is in force, assessed in the previous year to municipal tax on an income of not less than Rs. 200 per annum ; or

(c) is, in any area in the constituency in which neither a house or building tax nor a municipal tax based on income is in force, the owner or tenant of a house or building of which the rental value is not less than Rs. 36 per annum ; or

(d) has within the constituency any of the qualifications based on the holding of land hereinafter prescribed for an elector of a rural constituency ; or

(2) has a place of residence in the constituency and

(a) was in the previous year assessed to income tax ; or

(b) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

*Rural Constituencies.*

8. Subject to the provisions of paragraph 6 of this Schedule, a person shall be qualified as an elector for a rural constituency who has a place of residence in the constituency and—

(a) is, in an urban area included in the constituency in which a house or building tax is in force, the owner or tenant of a house or building of which the rental value is not less than Rs. 36 per annum ; or

(b) was, in an urban area included in the constituency in which no house or building tax is in force, assessed in the previous year to municipal tax on an income of not less than Rs. 200 per annum ; or

(c) is, in an urban area included in the constituency where neither a house or building tax nor a municipal tax based on income is in force, the owner or tenant of a house or building of which the rental value is not less than Rs. 36 ; or

(d) is the owner of land in the constituency in respect of which land revenue amounting to not less than Rs. 25 per annum is payable ; or

(e) is the owner of land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than Rs. 25 per annum ; or

(f) being a resident in the hill pattis of Kumaun, is the owner of a fee simple estate or is assessed to the payment of land revenue or cesses of any amount, or is a Khaikar ; or

(g) being in the constituency a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1901, or an under-proprietor or occupancy tenant as defined in the Oudh Rent Act, 1886, is liable to pay rent as such of not less than Rs. 25 per annum ; or

(h)—(i) being in the constituency a tenant as defined in the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, other than a sub-tenant, holds lands as such in respect of which rent of not less than Rs. 50 per annum or its equivalent in kind is payable, or

(ii) in areas in the United Provinces in which the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, is not in force, holds land as a tenant in respect of which rent of not less than Rs. 50 per annum or its equivalent in kind is payable ; or

(i) was in the previous year assessed to income tax ; or

(j) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

### *The European Constituency.*

9. Subject to the provisions of paragraph 6 of this Schedule, a person shall be qualified as an elector for the European constituency who has a place of residence in the United Provinces of Agra and Oudh, and has any of the qualifications prescribed for an elector of any urban or rural constituency.

### SPECIAL CONSTITUENCIES

#### *The Taluqdars' Constituency.*

10. A person shall be qualified as an elector for the Taluqdars' constituency who is an ordinary member of the British Indian Association of Oudh.

#### *Agra Landholders' Constituencies.*

11. A person shall be qualified as an elector for an Agra Landholders' constituency who has a place of residence in the constituency and

(a) is the owner of land in the constituency in respect of which land revenue amounting to not less than Rs. 5,000 is payable ; or

(b) is the owner of land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than Rs. 5,000 per annum :

Provided that, in determining the eligibility of a landholder as an elector, only land revenue payable or nominally assessed in respect of such land or share in land as he may hold in his own personal right and not in a fiduciary capacity shall be taken into account.

*Commerce and Industry Constituencies.*

12. A person shall be qualified as an elector—

- (a) for the Upper India Chamber of Commerce constituency who
  - (i) is a member, other than an honorary or affiliated member, of the Upper India Chamber of Commerce, and has a place of business within the United Provinces of Agra and Oudh ; or
  - (ii) is entitled to exercise the rights and privileges of membership of the said Chamber on behalf of and in the name of any firm, company, or other corporation which has a place of business within the United Provinces of Agra and Oudh ; and
- (b) for the United Provinces Chamber of Commerce constituency who
  - (i) is a member, other than an honorary member, of the United Provinces Chamber of Commerce, and has a place of business or residence in the United Provinces of Agra and Oudh ; or
  - (ii) is entitled to exercise the rights and privileges of membership of the said Chamber on behalf and in the name of any firm, company, or other corporation which has a place of business in the United Provinces of Agra and Oudh.

*The University Constituency.*

13. A person shall be qualified as an elector for the Allahabad University constituency who—

- (a) resides in India and is a member of the Senate or an Honorary Fellow of the University of Allahabad ; or
  - (b) resides in the United Provinces of Agra and Oudh and is
    - (i) a Doctor or Master, or
    - (ii) a graduate of not less than seven years' standing,
- in any Faculty of the University of Allahabad :

Provided that no elector shall have more than one vote in the constituency though he may have more than one of the aforesaid qualifications.

## PUNJAB RULES

### *Composition of Legislative Council.*

III. The Legislative Council of the Governor of the Punjab shall consist of—

- (1) the members of the Executive Council *ex-officio* ;
- (2) seventy-one elected members ;
- (3) such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to twenty-two : of the members so nominated—
  - (a) not more than fourteen may be officials, and
  - (b) four shall be persons nominated to represent the classes hereinafter specified according to the following distribution, namely :
    - (i) the European and Anglo-Indian communities . . . . . 2
    - (ii) the Indian Christian community . . . . . 1
    - (iii) the Punjabi officers and soldiers of His Majesty's Indian Forces . . . . . 1

### *Special Qualifications for Election in case of certain Constituencies.*

VI.—(1) No person shall be eligible for election as a member of the Council to represent a general constituency, unless—

- (a) his name is registered on the electoral roll of the constituency or of any other constituency in the province ; and
- (b) he resides in the constituency for which he desires to be elected ; and
- (c) in the case of a non-Muhammadan, Muhammadan, or Sikh constituency, he is himself a non-Muhammadan, Muhammadan, or Sikh, as the case may be.

(2) No person shall be eligible for election as a member of the Council to represent a special constituency, unless his name is entered on the electoral roll of the constituency.

(3) For the purposes of this rule a person may be presumed to reside in a constituency if he owns a residential house or a share in a residential house in the constituency, and that house has not during the twelve months preceding the date of publication of the electoral roll been let on rent either in whole or in part.

(4) For the purposes of these rules—

- (a) ' general constituency ' means a non-Muhammadan, Muhammadan, or Sikh constituency ; and
- (b) ' special constituency ' means a Landholders', University, Commerce, or Industry constituency.

### *Qualifications of Electors.*

VIII.—(1) The qualifications of an elector for a general constituency shall be such qualifications based on—

- (i) community,
- (ii) residence, and
- (iii)—(a) ownership or tenancy of immovable property, or
- (b) assessment to municipal or cantonment taxes, or
- (c) assessment to income tax, or
- (d) military service, or
- (e) the holding of a rural office, or
- (f) enjoyment of an assignment of land revenue,

as are specified in Schedule II in the case of that constituency.

(2) The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule II in the case of that constituency.

## PUNJAB.—SCHEDULE I

(See Rule IV.)

## I.—LIST OF CONSTITUENCIES

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>
Lahore City (Non-Muhammadan)	Non-Muhammadan Urban	The municipality and cantonment of Lahore.	1
Amritsar City (Non-Muhammadan)	Ditto	The municipality and cantonment of Amritsar.	1
South-east towns (Non-Muhammadan)	Ditto	The municipalities of Bhiwani, Hissar, Sirsa, Hansi, Rohtak, Sonapat, Jhajjar, Rewari, Panipat, Karnal, Kaithal, and Shahabad, and the notified areas of Karnal (civil station), Kaithal, and Hidayatpur Chhaoni (Gurgaon).	1
North-east towns (Non-Muhammadan)	Ditto	The municipalities of Ambala, Jagadhri, Simla, Ludhiana, Jagraon, Hoshiarpur, and Jullundur, and the cantonments of Ambala, Kasauli, Dagshai, Sabathu, Jutogh, and Jullundur.	1
East and West Central towns (Non-Muhammadan)	Ditto	The municipalities of Kasur, Ferozepur, Fazilka, Gurdaspur, Batala, Dalhousie, Sialkot, and Dharamsala, and the cantonments of Balun, Bakloh, Sialkot, Dharamsala, and Ferozepur.	1
North-west towns (Non-Muhammadan)	Ditto	The municipalities of Gujrat, Jalalpur Jattan, Bhera, Khushab, Jhelum, Pind Dadan Khan, Rawal Pindi, Murree, Mianwali, Gujranwala, and Wazirabad, and the cantonments of Jhelum, Rawal Pindi, Murree, Campbellpur, and Attock, and the notified areas of Sorgodha, Campbellpur, and Sheikhpura.	1
West Punjab towns (Non-Muhammadan)	Ditto	The municipalities of Montgomery, Lyallpur, Jhang-Maghiana, Chiniot, Multan, Muzaffargarh, and Dera Ghazi Khan, and the cantonment of Multan.	1
Hissar (Non-Muhammadan)	Non-Muhammadan Rural	The Hissar District . . . . .	1
South-east Rohtak (Non-Muhammadan)	Ditto	The Jhajjar and Sonapat Tahsils of the Rohtak District.	1
North-west Rohtak (Non-Muhammadan)	Ditto	The Rohtak and Gohana Tahsils of the Rohtak District.	1
Gurgaon (Non-Muhammadan)	Ditto	The Gurgaon District . . . . .	1
Karnal (Non-Muhammadan)	Ditto	The Karnal District . . . . .	1
Ambala cum Simla (Non-Muhammadan)	Ditto	The Ambala and Simla Districts . . . . .	1
Kangra (Non-Muhammadan)	Ditto	The Kangra District . . . . .	1
Hoshiarpur (Non-Muhammadan)	Ditto	The Hoshiarpur District . . . . .	1
Jullundur cum Ludhiana (Non-Muhammadan)	Ditto	The Jullundur and Ludhiana Districts.	1



<i>Name of Constituency.</i>	<i>Class of Constituency</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Lahore and Ferozepore <i>cum</i> Sheikhpura (Non-Muhammadan)	Non-Muham- madan Rural	The Lahore, Ferozepore, and Sheik- hupura Districts.	1
Amritsar <i>cum</i> Gurdas- pur (Non-Muhamma- dan)	Ditto	The Amritsar and Gurdaspur Dis- tricts.	1
Rawal Pindi Division and Lahore Division (North) (Non-Mu- hammadan)	Ditto	The Rawal Pindi Division and the Sialkot and Gujranwala Districts.	1
Multan Division (Non- Muhammadan)	Ditto	The Multan Division . . . . .	1
Lahore City (Muham- madan)	Muhammadan Urban	The municipality and cantonment of Lahore.	1
Amritsar City (Muham- madan)	Ditto	The municipality and cantonment of Amritsar.	1
West Punjab towns (Muhammadan)	Ditto	The municipalities of Gujrat, Jalal- pur Jattan, Bhera, Khushab, Jhe- lum, Pind Dadan Khan, Rawal Pindi, Murree, Mianwali, Mont- gomery, Lyallpur, Jhang-Maghi- ana, Chiniot, Multan, Muzaffar- garh, and Dera Ghazi Khan, the cantonments of Jhelum, Rawal Pindi, Murree, Campbellpur, At- tock, and Multan, and the notified areas of Sargodha and Campbell- pur.	1
East and West Central towns (Muhamma- dan)	Ditto	The municipalities of Kasur, Fe- rozepore, Fazilka, Gujranwala, Wazirabad, Sialkot, Gurdaspur, Batala, Dalhousie, Hoshiarpur, Jullundur, and Dharamsala, the cantonments of Ferozepore, Sial- kot, Balun, Bakloh, Jullundur, and Dharamsala, and the notified area of Sheikhpura.	1
South-east towns (Mu- hammadan)	Ditto	The municipalities of Bhiwani, His- sar, Sirsa, Hansi, Rohtak, Sonc- pat, Jhajjar, Rewari, Panipat, Karnal, Kaithal, Shahabad, Am- bala, Jagadhri, Simla, Ludhiana, and Jagraon, the cantonments of Ambala, Kasauli, Dagshai, Su- bathu, and Jutogh, and the noti- fied areas of Karnal (civil station), Kaithal, and Hidayatpore Chha- oni (Gurgaon).	1
Gurgaon <i>cum</i> Hissar (Muhammadan)	Muhammadan Rural	The Gurgaon and Hissar Districts.	1
Ambala Division (North-east) (Mu- hammadan)	Ditto	The Rohtak, Karnal, Ambala, and Simla Districts.	1
Hoshiarpur <i>cum</i> Ludi- hana (Muhammadan)	Ditto	The Hoshiarpur and Ludhiana Dis- tricts.	1
Ferozepore (Muham- madan)	Ditto	The Ferozepore District . . . .	1
Jullundur (Muhamma- dan)	Ditto	The Jullundur District . . . .	1
Kangra <i>cum</i> Gurdaspur (Muhammadan)	Ditto	The Kangra and Gurdaspur Dis- tricts.	1
Lahore (Muhammadan)	Ditto	The Lahore District . . . . .	1
Amritsar (Muhamma- dan)	Ditto	The Amritsar District . . . . .	1

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>
Sialkot (Muhammadan)	Muhammadan	The Sialkot District . . . . .	1
Gujranwala (Muhammadan)	Rural		
	Ditto	The Gujranwala District . . . . .	1
Sheikhupura (Muhammadan)	Ditto	The Sheikhupura District . . . . .	1
Gujrat West (Muhammadan)	Ditto	The Phalia Tahsil of the Gujrat District.	1
Gujrat East (Muhammadan)	Ditto	The Kharian and Gujrat Tahsils of the Gujrat District.	1
Shahpur West (Muhammadan)	Ditto	The Khushab and Shahpur Tahsils of the Shahpur District.	1
Shahpur East (Muhammadan)	Ditto	The Sargodha and Bhalwal Tahsils of the Shahpur District.	1
Mianwali (Muhammadan)	Ditto	The Mianwali District . . . . .	1
Attock (Muhammadan)	Ditto	The Attock District . . . . .	1
Rawal Pindi (Muhammadan)	Ditto	The Rawal Pindi District . . . . .	1
Jhelum (Muhammadan)	Ditto	The Jhelum District . . . . .	1
Lyallpur North (Muhammadan)	Ditto	The Lyallpur and Jaranwala Tahsils of the Lyallpur District.	1
Lyallpur South (Muhammadan)	Ditto	The Samundri and Toba Tek Singh Tahsils of the Lyallpur District.	1
Montgomery (Muhammadan)	Ditto	The Montgomery District . . . . .	1
Multan East (Muhammadan)	Ditto	The Kabirwala, Khanewal, and Mailsi Tahsils of the Multan District.	1
Multan West (Muhammadan)	Ditto	The Multan, Shujabad, and Lodhran Tahsils of the Multan District.	1
Jhang (Muhammadan)	Ditto	The Jhang District . . . . .	1
Muzaffargarh (Muhammadan)	Ditto	The Muzaffargarh District . . . . .	1
Dera Ghazi Khan (Muhammadan)	Ditto	The Dera Ghazi Khan District . . . . .	1
Sikh Urban . . . . .	Sikh Urban	The municipalities of Lahore. Amritsar, Bhiwani, Hissar, Sirsa, Hansi, Rohtak, Sonapat, Jhajjar, Rewari, Panipat, Karnal, Kaithal, Shahabad, Ambala, Jagadhri, Simla, Ludhiana, Jagraon, Hoshiarpur, Jullundur, Kasur, Ferozepur, Fazilka, Gurdaspur, Batala, Dalhousie, Sialkot, Dharmasala, Gujrat, Jalalpur, Jattan, Bhera, Khushab, Jhelum, Pind Dadan Khan, Rawal Pindi, Murree, Mianwali, Gujranwala, Wazirabad, Montgomery, Lyallpur, Jhang-Maghana, Chimot, Multan, Muzaffargarh, and Dera Ghazi Khan; the cantonments of Amritsar, Ambala, Kasauli, Dagshai, Sabathu, Jutogh, Lahore, Jullundur, Batun, Baktoha, Sialkot, Dharmasala, Ferozepur, Jhelum, Rawal Pindi, Murree, Campbellpur, Attock, Multan, and the notified areas of Karnal (civil station), Kaithal, Hidayatpur Chhaoni (Gurgaon), Sargodha, Campbellpur, and Sheikhupura.	1

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem. bers.</i>
Ambala Division (Sikh)	Sikh Rural	The Ambala Division. . . . .	1
Hoshiarpur and Kangra (Sikh).	Ditto	The Hoshiarpur and Kangra Districts.	1
Jullundur (Sikh) . .	Ditto	The Jullundur District . . . . .	1
Ludhiana (Sikh) . .	Ditto	The Ludhiana District . . . . .	1
Ferozepur (Sikh) . .	Ditto	The Ferozepur District . . . . .	1
Lahore (Sikh) . . . .	Ditto	The Lahore District . . . . .	1
Amritsar (Sikh) . . .	Ditto	The Amritsar District . . . . .	1
Sialkot <i>cum</i> Gurdaspur (Sikh)	Ditto	Sialkot and Gurdaspur Districts .	1
Lyallpur (Sikh) . . .	Ditto	The Lyallpur District . . . . .	1
Multan Division and Sheikhpura (Sikh)	Ditto	The Sheikhpura District, and the Multan Division excluding the Lyallpur District.	1
Rawal Pindi Division and Gujranwala (Sikh)	Ditto	The Gujranwala District and the Rawal Pindi Division.	1
Punjab Landholders (General)	Landholders	The Punjab . . . . .	1
Muhammadan Landholders	Ditto	Ditto	1
Sikh Landholders . .	Ditto	Ditto	1
Baloch Tumandars . .	Ditto	(Non-territorial) . . . . .	1
Punjab University . .	University	Ditto	1
Punjab Chamber of Commerce and Trades Association	Commerce	Ditto	1
Punjab Industries . .	Industry	Ditto	1

II. The definition in this Schedule of the extent of a rural constituency by reference to a Division or District or part of a District shall not have the effect of including in that constituency any area which is included in an urban constituency of the same communal description.

## PUNJAB.—SCHEDULE II

(See Rule VIII.)

### QUALIFICATIONS OF ELECTORS

#### *Interpretation.*

#### 1. For the purpose of this Schedule—

- (a) 'annual rental value' in relation to immovable property means the amount for which such property, together with its appurtenances and furniture, if any, is actually let or may reasonably be expected to let from year to year ;
- (b) 'company' means a company incorporated in accordance with law in any part of His Majesty's Dominions ;
- (c) 'date of publication of the electoral roll' means the date on which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules ;
- (d) 'land revenue' means land revenue as defined in section 3 (6) of the Punjab Land Revenue Act, 1887, and, in the case of fluctuating land revenue or land revenue assessed on lands subject to river action, the average amount of such land revenue paid during the three years preceding the date of publication of the electoral roll ;

- (e) 'member' in relation to the Punjab Chamber of Commerce or the Punjab Trades Association includes any person entitled to exercise the rights and privileges of membership on behalf of and in the name of any firm, company or corporation registered as a member ;
- (f) 'owner' does not include a mortgagee or any person holding property in a fiduciary capacity ;
- (g) 'the land records' means an attested record of rights or an attested annual record of rights maintained under Chapter IV of the Punjab Land Revenue Act, 1887, and includes an order finally sanctioning a mutation duly passed under that Chapter ;
- (h) 'zaildar,' 'inamdar,' 'sufedposh,' and 'lambardar' mean respectively a person appointed as a zaildar, inamdar, sufedposh or lambardar in accordance with rules for the time being in force under the Punjab Land Revenue Act, 1887, and do not include a substitute appointed temporarily for any such person.

*Presumption as to Residence.*

2. For the purposes of this Schedule, a person may be presumed to reside in a constituency if he owns a family dwelling-house, or a share in a family dwelling-house, in the constituency, and that house has not during the twelve months preceding the date of publication of the electoral roll been let on rent either in whole or in part.

*Land Records, &c. to be conclusive Evidence.*

3. For the purpose of determining any claim to a qualification under this Schedule, any entry in the land records or in any municipal or cantonment records shall be conclusive evidence of the facts stated therein.

*Co-sharers.*

4. Where two or more persons are co-sharers in land assessed to land revenue or in other immovable property, or in a tenancy or lease of land assessed to land revenue, or in the receipt of assigned land revenue, every such person shall be qualified as an elector who would be so qualified if his share in such land, property, tenancy, lease, or assignment were held separately.

*Explanation.*—For the purposes of this paragraph the share of any such person who is under 21 years of age shall be deemed to be the share of his father or, if his father is dead, of his eldest brother, provided that his father or eldest brother, as the case may be, is a co-sharer with him in the property.

GENERAL CONSTITUENCIES

*Qualification based on Community.*

5. A person shall be qualified as an elector—

- (a) in a non-Muhammadan constituency who is neither a Muhammadan nor a Sikh ;
- (b) in a Muhammadan constituency who is a Muhammadan ; and
- (c) in a Sikh constituency who is a Sikh :

Provided that such person has the further qualifications hereinafter prescribed for an elector of the particular constituency.

*Explanation.*—If any question arises as to whether any person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh, according as he makes or refuses to make, in such form and manner as the local Government may by regulation prescribe, a declaration that he is a Sikh.

*Other Qualifications.*

6. Subject to the provisions of paragraph 5 of this Schedule, a person shall be qualified as an elector for an urban constituency who resides in the constituency and who—

- (a) has owned for the twelve months preceding the date of publication of the electoral roll immovable property, not being land assessed to land revenue but including any building erected on such land, of the value of not less than Rs. 4,000 or of an annual rental value of not less than Rs. 96: provided that a person shall be deemed to have owned such property for any period during which it was owned by any person through whom he derives title by inheritance; or
- (b) has for the twelve months aforesaid occupied as a tenant in the constituency immovable property, not being land assessed to land revenue but including any building erected on such land, of an annual rental value of not less than Rs. 96; or
- (c) was during the twelve months aforesaid assessed in respect of any direct municipal or cantonment tax to an amount of not less than Rs. 50; or
- (d) was during the financial year preceding the date of publication of the electoral roll assessed to income tax; or
- (e) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces; or
- (f) has any of the qualifications hereinafter prescribed for an elector of a rural constituency.

For the purpose of clause (b)—

- (1) a person who occupies a building other than a building in any military or police lines, or part of such a building, by virtue of any office, service or employment shall be deemed to occupy the building or part as a tenant; and
- (2) where a building, or part of a building separately occupied, is occupied by two or more persons, one person only shall be qualified in respect of such occupation.

*Rural Constituencies.*

7. Subject to the provisions of paragraph 5 of this Schedule, a person shall be qualified as an elector for a rural constituency who resides in the constituency; and who—

- (a) is a zaildar, inamdar, sufedposh or lambardar in the constituency; or
- (b) is the owner of land assessed to land revenue of not less than Rs. 25 per annum; or
- (c) is an assignee of land revenue amounting to not less than Rs. 50 per annum; or
- (d) is a tenant or lessee, under the terms of a lease for a period of not less than three years, of Crown land for which rent of not less than Rs. 25 per annum is payable: provided that, when the amount payable is assessed from harvest to harvest, the annual rent payable by such person shall be deemed to be the annual average amount payable by him in the three years preceding the date aforesaid; or
- (e) is a tenant with a right of occupancy as defined in Chapter II of the Punjab Tenancy Act, 1887, in respect of land assessed to land revenue of not less than Rs. 25 per annum; or
- (f) was during the financial year preceding the date of publication of the electoral roll assessed to income tax; or
- (g) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces; or
- (h) has any of the qualifications prescribed for an elector of an urban constituency.

## SPECIAL CONSTITUENCIES

*Landholders' Constituencies.*

8.—(1) A person shall be qualified as an elector for a Landholders' constituency (other than the Baloch Tumandars' constituency) who resides in the Punjab and who is—

(a) the owner of land assessed to land revenue of not less than Rs. 500 per annum; or

(b) an assignee of land revenue amounting to not less than Rs. 500 per annum :

Provided that no person shall be qualified as an elector for the Muhammadan Landholders' constituency who is not a Muhammadan or for the Sikh Landholders' constituency who is not a Sikh, and no Muhammadan or Sikh shall be qualified as an elector for the Punjab Landholders' (General) constituency.

(2) A person shall be qualified as an elector for the Baloch Tumandars' constituency who is a Tumandar recognized by the Government or a person performing the duties of a Tumandar with the sanction of the Government.

*The University Constituency.*

9. A person shall be qualified as an elector for the Punjab University constituency who resides in the Punjab and is a Fellow or Honorary Fellow of the Punjab University or a Graduate of the University of not less than seven years' standing.

*The Commerce Constituency.*

10. A person shall be qualified as an elector for the Commerce constituency who has a place of business, or works for gain, in the Punjab and is a member of the Punjab Chamber of Commerce or of the Punjab Trades Association.

*The Industry Constituency.*

11. A person shall be qualified as an elector for the Industry constituency who

(a) is the owner of a factory which is situated in the Punjab and is subject to the provisions of the Indian Factories Act, 1911, and in which work has been carried on during the twelve months preceding the date of the publication of the electoral roll; or

(b) is a partner in a firm owning such a factory and has been nominated by the firm for the purpose of voting in its behalf; or

(c) is a member of a company having a place of business in the Punjab and having a paid-up capital of not less than Rs. 25,000 and has been nominated by the company for the purpose of voting in its behalf.

## BIHAR AND ORISSA RULES

### *Composition of Legislative Council.*

III. The Legislative Council of the Governor of Bihar and Orissa shall consist of—

- (1) the members of the Executive Council *ex-officio* ;
- (2) seventy-six elected members ;
- (3) such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to twenty-seven : of the members so nominated—

- (a) not more than eighteen may be officials, and
- (b) nine shall be persons nominated to represent classes or interests hereinafter specified according to the following distribution, namely :
 

(i) aborigines . . . . .	2
(ii) classes which are, in the opinion of the Governor, depressed classes . . . . .	2
(iii) industrial interests other than planting and mining . . . . .	1
(iv) the Bengali community domiciled in the province . . . . .	1
(v) the Anglo-Indian community . . . . .	1
(vi) the Indian-Christian community . . . . .	1
(vii) the labouring classes . . . . .	1

### *Special Qualifications for Election in case of certain Constituencies.*

VI. (1) (a) No person shall be eligible for election as a member of the Council to represent a general constituency, unless his name is registered on the electoral roll of the constituency, or of any other constituency in the province ; and unless, in the case of a non-Muhammadan, Muhammadan, or European constituency, he is himself a non-Muhammadan, Muhammadan, or European, as the case may be.

(b) No person shall be eligible for election as a member of the Council to represent a special constituency, unless his name is registered on the electoral roll of the constituency.

(2) For the purposes of these rules 'general constituency' means a non-Muhammadan, Muhammadan, or European constituency ;

'Special constituency' means a Landholders', University, Planting or Mining constituency.

### *Qualifications of Electors.*

VIII.—(1) The qualifications of an elector for a general constituency shall be such qualifications based on—

- (i) community,
- (ii) residence, and
- (iii)—(a) assessment to municipal or cantonment rates or taxes, or
- (b) assessment to income tax, or
- (c) military service, or
- (d) the holding of land, or
- (e) assessment under section 118C of the Bengal Local Self-Government Act, 1885 or section 47 of the Bihar and Orissa Village Administration Act, 1922.

as are specified in Schedule II, in the case of that constituency.

(2) The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule II in the case of that constituency.

## BIHAR AND ORISSA.—SCHEDULE I

(See Rule IV.)

## LIST OF CONSTITUENCIES

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>
Patna (Non-Muhammadian Urban)	Non-Muhammadian Urban	Patna City Municipality and Patna as defined in the Patna Administration Act, 1915.	1
Patna Division (Non-Muhammadian Urban)	Ditto	The municipalities and cantonments of the Patna Division (excluding Patna City Municipality and Patna as defined in the Patna Administration Act, 1915).	1
Tirhut Division (Non-Muhammadian Urban)	Ditto	The municipalities of the Tirhut Division.	1
Bhagalpur Division (Non-Muhammadian Urban)	Ditto	The municipalities of the Bhagalpur Division.	1
Orissa Division (Non-Muhammadian Urban)	Ditto	The municipalities of the Orissa Division.	1
Chota Nagpur Division (Non-Muhammadian Urban)	Ditto	The municipalities of the Chota Nagpur Division.	1
West Patna (Non-Muhammadian Rural)	Non-Muhammadian Rural	The Patna City and Sadr sub-divisions of Patna District (excluding Patna City Municipality and the area administered by the Patna administration Committee) and Dinapore sub division (excluding municipal and cantonment areas) and Police Station Fatwa of the Barh sub-division and Police Stations Hilsa, Ekanagar-Sarai, and Islampur of the Bihar sub-division.	1
East Patna (Non-Muhammadian Rural)	Ditto	Barh sub-division (excluding the municipal area and Police Station Fatwa) and Bihar sub-division (excluding the municipal area and Police Stations Hilsa, Ekanagar-Sarai, and Islampur).	1
West Gaya (Non-Muhammadian Rural)	Ditto	Aurangabad sub-division (excluding the municipal area) and Police Stations Arwal and Kurtha of the Jahanabad sub-division.	1
Central Gaya (Non-Muhammadian Rural)	Ditto	The Sadr sub-division of Gaya District (excluding municipal areas and Police Stations Atri and Khizer Sarai) and Police Station Makhdumpur of the Jahanabad sub-division.	1
East Gaya (Non-Muhammadian Rural)	Ditto	Nawada sub-division, and Jahanabad sub-division (excluding Police Stations Arwal, Kurtha, and Makhdumpur) and Police Stations Atri and Khizer Sarai of the Sadr sub-division.	1
Arrah (Non-Muhammadian Rural)	Ditto	The Sadr sub-division of Shahabad District (excluding municipal areas).	1



<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Central Shahabad (Non - Muhammadan Rural)	Non-Muham- madan Rural	Buxar sub-division (excluding mun- icipal areas) and Police Stations Bikramganj and Dinara of Sasa- ram sub-division, and Police Sta- tion Ramgarh of the Bhabua sub- division.	1
South Shahabad (Non- Muhammadan Rural)	Ditto	Bhabua sub-division (excluding the municipal area and Ramgarh Police Station) and Sasaram sub- division (excluding the municipal area and Police Stations Bikram- ganj and Dinara).	1
North Saran (Non-Mu- hammadan Rural)	Ditto	Gopalganj sub-division and Siwan sub-division (excluding the mun- icipal area and Police Stations Basantpur and Maharajganj).	1
South Saran (Non-Mu- hammadan Rural)	Ditto	The Sadr sub-division of Saran District (excluding municipal areas) and Police Stations Basant- pur and Maharajganj of the Siwan sub-division.	1
North Champaran (Non - Muhammadan Rural)	Ditto	Bettiah sub-division (excluding the municipal area) and Police Station Gobindganj of the Sadr sub- division of Champaran District.	1
South Champaran (Non - Muhammadan Rural)	Ditto	The Sadr sub-division of Cham- paran District (excluding the municipal area and Police Station Gobindganj).	1
North Muzaffarpur (Non - Muhammadan Rural)	Ditto	Sitamarhi sub-division (excluding the municipal area and Police Stations Belsand and Pupri).	1
East Muzaffarpur (Non - Muhammadan Rural)	Ditto	Police Stations Shakra and Katra of the Sadr sub-division of Mu- zaffarpur District, and Police Stations Belsand and Pupri of the Sitamarhi sub-division.	1
West Muzaffarpur (Non - Muhammadan Rural)	Ditto	The Sadr sub-division of Muzaffar- pur District (excluding the mun- icipal area and Police Stations Shakra and Katra).	1
Hajipur (Non-Muham- madan Rural)	Ditto	Hajipur sub-division of Muzaffar- pur District (excluding municipal areas).	1
North-West Darbhanga (Non - Muhammadan Rural)	Ditto	Police Stations Benipatti, Madha- wapur and Harlakhi of Madhu- bani sub-division and the Sadr sub-division of Darbhanga Dis- trict (excluding the municipal area and Police Station Bahera.	1
North-East Darbhanga (Non - Muhammadan Rural)	Ditto	Madhubani sub-division (excluding municipal area and Police Sta- tions Benipatti, Harlakhi, Madha- wapur, and Madhaipur).	1
South-East Darbhanga (Non - Muhammadan Rural)	Ditto	Police Station Bahera of the Sadr sub-division of Darbhanga Dis- trict and Police Stations Roserha and Singia of the Samastipur sub- division (excluding the municipal area) and Police Station Madhai- pur of the Madhubani sub-divi- sion.	1

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No of Members.</i>
Samastipur (Non-Muhammadan Rural)	Non-Muhammadan Rural	Samastipur sub-division of the district of Darbhanga (excluding the municipal area and Police Stations Roserha and Singia).	1
North Bhagalpur (Non-Muhammadan Rural)	Ditto	Supaul sub-division and Police Station Bargaon of the Madhipura sub-division.	1
Central Bhagalpur (Non - Muhammadan Rural)	Ditto	Mahdipura sub-division (excluding Bargaon Police Station) and Police Stations Bhagalpur Mufassal, Nathnagar, Gopalpur, and Bihpur of the Sadr sub-division of Bhagalpur District.	1
South Bhagalpur (Non-Muhammadan Rural)	Ditto	The Banka and Sadr sub-divisions of Bhagalpur District (excluding Police Stations Bhagalpur Mufassal, Nathnagar, Gopalpur, and Bihpur and municipal areas).	1
East Monghyr (Non-Muhammadan Rural)	Ditto	The Sadr sub division of Monghyr District (excluding Police Stations Sheikhpura, Barbigha, Lakhisarai, and Surajgarh and municipal areas).	1
North-West Monghyr (Non - Muhammadan Rural)	Ditto	Begusaral sub-division . . . .	1
South-West Monghyr (Non - Muhammadan Rural)	Ditto	Jamui sub-division and Police Stations Sheikhpura, Barbigha, Lakhisarai, and Surajgarh of the Sadr sub-division of Monghyr District.	1
Purnea (Non-Muhammadan Rural)	Ditto	The District of Purnea (excluding municipal areas).	1
Santal Parganas (North) (Non-Muhammadan Rural)	Ditto	Rajmahal sub-division (excluding the municipal area) and Godda and Pakaur sub-divisions.	1
Santal Parganas (South) (Non-Muhammadan Rural)	Ditto	Deogbar sub-division (excluding municipal areas) and Jamtara and Dumka sub-divisions (excluding the municipal area).	1
North Cuttack (Non-Muhammadan Rural)	Ditto	Kendrapara and Jajpur sub-divisions (excluding municipal areas).	1
South Cuttack (Non-Muhammadan Rural)	Ditto	The Sadr sub-division of Cuttack District (excluding the municipal area).	1
North Balasore (Non-Muhammadan Rural)	Ditto	The Sadr sub-division of Balasore District (excluding the municipal area and Police Stations Similia and Anantpur).	1
South Balasore (Non-Muhammadan Rural)	Ditto	Bhadrakh sub-division, and Police Stations Similia and Anantpur of the Sadr sub-division of Balasore District.	1
North Puri (Non-Muhammadan Rural)	Ditto	Khurda sub-division, and Police Stations Pipili and Delang of the Sadr sub-division of Puri District.	1
South Puri (Non-Muhammadan Rural)	Ditto	The Sadr sub-division of Puri District (excluding the municipal area and Police Stations Pipili and Delang).	1
Sambalpur (Non-Muhammadan Rural)	Ditto	The District of Sambalpur (excluding the municipal area).	1

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Ranchi (Non-Muham- madan Rural)	Non-Muham- madan Rural.	The District of Ranchi (excluding municipal areas).	1
Hazaribagh (Non-Mu- hammadan Rural)	Ditto	The District of Hazaribagh (exclud- ing municipal areas)	1
Palamau (Non-Muham- madan Rural)	Ditto	The District of Palamau (excluding the municipal area).	1
North Manbhum (Non- Muhammadan Rural)	Ditto	Dhanbad sub-division (excluding the municipal area), and Police Stations Chas, Para, Gaurandi, Santuri, Nithuria, and Raghu- nathpur (excluding the municipal area) of the Sadr sub-division of Manbhum District.	1
South Manbhum (Non- Muhammadan Rural)	Ditto	The Sadr sub-division of Manbhum District (excluding Police Sta- tions Chas, Para, Gaurandi, San- turi, Nithuria, Raghunathpur, and municipal areas).	1
Singhbhum (Non-Mu- hammadan Rural)	Ditto	The District of Singhbhum (exclud- ing municipal areas).	1
Patna Division (Mu- hammadan Urban)	Muhammadan Urban	The municipalities and canton- ments of the Patna Division.	1
Tirhut Division (Mu- hammadan Urban)	Ditto	The municipalities of the Tirhut Division.	1
Bhagalpur Division (Muhammadan Urban)	Ditto	The municipalities of the Bhagalpur Division.	1
West Patna (Muham- madan Rural)	Muhammadan Rural	The Patna City and sadar sub- divisions of Patna District (ex- cluding Patna City Municipality and the area administered by the Patna Administration Committee) and Dinapore sub-division (ex- cluding municipal and canton- ment areas), and Police Station Fatwa of the Barh sub-division, and Police Stations Hilsa, Ekan- gar Sarai and Islampur of the Bihar sub-division.	1
East Patna (Muham- madan Rural)	Ditto	Barh sub-division (excluding the municipal area and Police Station Fatwa), and Bihar sub-division (excluding the municipal area and Police Stations Hilsa, Ekanagar Sarai, and Islampur).	1
Gaya (Muhammadan Rural)	Ditto	The District of Gaya (excluding municipal areas).	1
Shahabad (Muham- madan Rural)	Ditto	The District of Shahabad (exclud- ing municipal areas).	1
Saran (Muhammadan Rural)	Ditto	The District of Saran (excluding municipal areas).	1
Champaran (Muham- madan Rural)	Ditto	The District of Champaran (exclud- ing municipal areas).	1
Muzaffarpur (Muham- madan Rural)	Ditto	The District of Muzaffarpur (ex- cluding municipal areas).	1
Darbhanga (Muham- madan Rural)	Ditto	The District of Darbhanga (exclud- ing municipal areas).	1
Bhagalpur (Muham- madan Rural)	Ditto	The District of Bhagalpur (exclud- ing municipal areas).	1
Monghyr (Muham- madan Rural)	Ditto	The District of Monghyr (excluding municipal areas).	1
Kishanganj (Muham- madan Rural)	Ditto	Kishanganj sub-division of the District of Purnea (excluding the municipal area).	1

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Purnea (Muhammadan Rural)	Muhammadan Rural	The Sadar and Araria sub-divisions of the District of Purnea (excluding municipal areas).	1
Santal Parganas (Muhammadan Rural)	Ditto	The District of the Santal Parganas (excluding municipal areas).	1
Orissa Division (Muhammadan Rural)	Ditto	The Districts of the Orissa Division (except Angul).	1
Chota Nagpur Division (Muhammadan Rural)	Ditto	The Districts of the Chota Nagpur Division.	1
European . . . . .	European	The Province of Bihar and Orissa .	1
Patna Division Landholders	Landholders	The Patna Division . . . . .	1
Tirhut Division Landholders	Ditto	The Tirhut Division . . . . .	1
Bhagalpur Division Landholders	Ditto	The Bhagalpur Division . . . . .	1
Orissa Division Landholders	Ditto	The Orissa Division . . . . .	1
Chota Nagpur Landholders	Ditto	The Chota Nagpur Division . . .	1
Bihar Planters . . . .	Planting	(Non-territorial) . . . . .	1
Indian Mining Association	Mining	Ditto . . . . .	1
Indian Mining Federation	Ditto	Ditto . . . . .	1
Patna University . . .	University	Ditto . . . . .	1

## BIHAR AND ORISSA.—SCHEDULE II

(See Rule VIII.)

## QUALIFICATIONS OF ELECTORS

*Interpretation.*

## 1. For the purposes of this Schedule—

- (a) 'a European' means a person of European descent in the male line, being a British subject and resident in British India, who either was born in, or has a domicile in, the United Kingdom or in any British possession or in any State in India, or whose father was so born or has or had up to the date of the birth of the person in question such a domicile;
- (b) 'member' in relation to a Planting or Mining Association includes any person entitled to exercise the rights and privileges of membership on behalf of and in the name of any firm, company or corporation registered as a member;
- (c) 'previous year' means the financial year preceding that in which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules;
- (d) a person shall be deemed to have a place of residence within the limits of a constituency if he—
  - (a) ordinarily lives within those limits, or
  - (b) has his family dwelling-house within those limits and occasionally occupies it, or

- (c) maintains within those limits a dwelling-house ready for occupation in charge of servants and occasionally occupies it.

*Explanation.*—A person may be resident within the limits of more than one constituency at the same time.

*Joint Families.*

2. Where property is held or payments are made jointly by the members of a joint family, the family shall be adopted as the unit for deciding whether under this Schedule the requisite qualification exists; and, if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof and in other cases the member authorized in that behalf by the family concerned.

GENERAL CONSTITUENCIES

*Non-Muhammadan and Muhammadan Urban Constituencies.*

3. A person shall be qualified as an elector for a non-Muhammadan or Muhammadan urban constituency who has a place of residence in the constituency or within two miles of the boundary thereof, and

- (a) was in the previous year assessed in respect of any municipal or cantonment rates or taxes to an aggregate amount of not less than Rs. 3, or
- (b) was in the previous year assessed to income-tax, or
- (c) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces, or
- (d) holds within the constituency any of the qualifications hereinafter prescribed for an elector of a rural constituency:

Provided that—

- (a) no person who is not a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and
- (b) no Muhammadan or European shall be qualified as an elector for a non-Muhammadan constituency.

*Non-Muhammadan and Muhammadan Rural Constituencies.*

4. A person shall be qualified as an elector for a non-Muhammadan or Muhammadan rural constituency who has a place of residence in the constituency, and—

- (a) holds an estate or estates or a portion of an estate or portions of estates for which a separate account or accounts (including a residuary account) has or have been opened, for which land, whether revenue-paying or revenue-free or rent-free land, an aggregate amount of not less than Rs. 12 per annum is payable direct to the Treasury as local cess; or
- (b) holds a tenure or tenures and is assessed for the purpose of local cess at an aggregate amount of not less than Rs. 100 per annum; or
- (c) holds land as a raiyat and is liable to pay an annual aggregate rent or local cess amounting respectively—

- (i) to Rs. 16 and to 8 annas in constituencies in the Orissa and Chota Nagpur Divisions,
- (ii) to Rs. 64 and to Rs. 2 in constituencies in the Patna Division and the Monghyr District,
- (iii) to Rs. 24 and to 12 annas in constituencies in the Sonthal Parganas, and
- (iv) to Rs. 48 and to Rs. 1-8-0 elsewhere; or
- (d) was in the previous year assessed to not less than Rs. 1-8-0 under section 118 C of the Bengal Local Self-Government Act, 1885 or section 47 of the Bihar and Orissa Village Administration Act, 1922; or
- (e) was in the previous year assessed to income-tax; or
- (f) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces; or
- (g) being a Muhammadan resident in the Orissa or Chota Nagpur Divisions,

was in the previous year assessed in respect of any municipal or cantonment rates or taxes to an aggregate amount of not less than Rs. 3 :

Provided that—

- (i) no person who is not a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and
- (ii) no Muhammadan or European shall be qualified as an elector for a non-Muhammadan constituency.

*Explanation.*—If a person who is not qualified as an elector under clause (c) in respect of land held in any one constituency holds land in more than one constituency, and if the aggregate amount of the local cess or rent payable on such land is not less than the amount prescribed for the constituency in which he is liable to make the largest payment, he shall be qualified as an elector for that constituency, provided that he has a place of residence in any one of the constituencies.

#### *The European Constituency.*

5. A person shall be qualified as an elector for the European constituency who is a European and has a place of residence in the province of Bihar and Orissa, and has any of the qualifications prescribed for an elector of any urban or rural constituency.

#### SPECIAL CONSTITUENCIES

##### *Landholders' Constituencies.*

6.—(1) Every landholder shall be qualified as an elector for a Landholders' constituency who has a place of residence in the constituency and is liable to pay not less than Rs. 4,000 land revenue or Rs. 1,000 local cess in the case of the Patna Division Landholders', the Tirhut Division Landholders' and the Bhagalpur Division Landholders' constituencies, or Rs. 6,000 land revenue or Rs. 500 local cess in the case of the Orissa Division Landholders' and Chota Nagpur Division Landholders' constituencies.

(2) In determining the qualification of a landholder as an elector for any constituency—

- (a) only such estates and shares of estates as are held by him as proprietor in his own right and not in a fiduciary capacity and are registered in his own name in registers maintained under the Land Registration Act, 1876, whether such estates or shares are situated in one or more constituencies, shall be taken into account ;
- (b) if the amount paid by the landholder in respect of any such share of an estate is not definitely known, the District Officer of the district in which such estate is situated shall estimate the amount so paid in respect of such shares, and his decision shall be final ; and
- (c) if a landholder pays land revenue or cesses in respect of estates, or shares in estates, situated in two or more constituencies and if his payments in any one constituency do not qualify him as an elector, his payments within all the constituencies shall be aggregated, and, if such aggregate equals or exceeds the amount prescribed for the constituency in which he makes the largest payment, he shall be qualified as an elector for that constituency.

##### *The University Constituency.*

7. A person shall be qualified as an elector for the Patna University constituency who has a place of residence in the province of Bihar and Orissa and is a member of the Senate or of the Syndicate of the University or is a graduate, registered under Regulation 2, Chapter XII, or Regulation 1, Chapter XIII, of the Regulations of the Patna University.

*The Planting Constituency.*

8. A person shall be qualified as an elector for the Bihar Planters' constituency who is a member of the Bihar Planters' Association, Limited, and qualified to vote as such and for the time being resident in India.

*Mining Constituencies.*

9. A person shall be qualified as an elector for the Indian Mining Association constituency who is a member of the Indian Mining Association, and a person shall be qualified as an elector for the Indian Mining Federation constituency who is a member of the Indian Mining Federation: provided that any person who is a member both of the Association and of the Federation shall be qualified as an elector for such one only of the constituencies as he may elect.

## CENTRAL PROVINCES RULES

### *Composition of Legislative Council.*

III. The Legislative Council of the Governor of the Central Provinces shall consist of—

- (1) the members of the Executive Council *ex-officio* ;
- (2) thirty-seven elected members ;
- (3) such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to thirty-three : of the members so nominated :—
  - (a) not more than eight may be officials,
  - (b) seventeen shall be persons nominated as the result of elections held in Berar, and
  - (c) five shall be persons nominated to represent the classes hereinafter specified according to the following distribution, namely :—
    - (i) the inhabitants of the Mandla district, excluding Mandla town . . . . . 1
    - (ii) the inhabitants of zamindari and jagirdari estates excluded under Schedule I, from the area of any constituency . . 1
    - (iii) the European and Anglo-Indian communities . . . 1
    - (iv) classes which, in the opinion of the Governor, are depressed classes . . . . . 2

Provided that, until the reconstitution of the Council next following the date on which a university is established at Nagpur, the number of elected members shall be thirty-six and the number of persons nominated by the Governor shall be thirty-two, of whom one shall be nominated to represent university education in the Central Provinces.

### *Special Qualifications for Election in case of certain Constituencies.*

VI.—(1) No person shall be eligible for election as a Member of the Council to represent a general constituency, unless—

- (a) his name is registered on the electoral roll of the constituency or of any other constituency in the province, and
- (b) he has a place of residence in a district any part of which is included in the constituency or, in the case of an urban constituency, in any such district or within two miles of the boundary of the constituency ; and
- (c) in the case of a non-Muhammadan or a Muhammadan constituency, he is himself a non-Muhammadan or Muhammadan, as the case may be.

(2) No person shall be eligible for election as a Member of the Council to represent a special constituency unless his name is entered on the electoral roll of the constituency.

(3) For the purposes of this rule a person shall be deemed to have a place of residence in a district or within two miles of the boundary of a constituency, as the case may be, if he—

- (i) has actually dwelt in a house, or part of a house, within the district or within two miles of such boundary as the case may be for an aggregate period of not less than 180 days during the calendar year preceding that in which the electoral roll for the time being under preparation is first published under these rules ; or
- (ii) has maintained within the district or within two miles of such boundary as the case may be for an aggregate period of not less than 180 days



during that year a house, or part of a house, as a dwelling for himself in charge of his dependents or servants, and has visited such house during that year.

(4) For the purposes of these rules :—

- (a) 'general constituency' means a non-Muhammadan or Muhammadan constituency : and  
 (b) 'special constituency' means a Landholders', University, Mining, or Commerce and Industry constituency.

*Qualifications of Electors.*

VIII.—(1) The qualifications of an elector for a general constituency shall be such qualifications based on—

- (i) community,  
 (ii) residence, and  
 (iii)—(a) ownership or tenancy of a building, or  
 (b) assessment to municipal tax, or  
 (c) assessment to income-tax, or  
 (d) military service, or  
 (e) the holding of land,  
 (f) the holding of a village office,

as are specified in Schedule II in the case of that constituency.

(2) The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule II in the case of that constituency.

CENTRAL PROVINCES.—SCHEDULE I

I. LIST OF CONSTITUENCIES

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Jubbulpore City . .	Non-Muham- madan Urban	The municipality, cantonment, and railway settlements of, and the Government gun-carriage factory estate, at Jubbulpore.	1
Jubbulpore Division (Urban)	Ditto	The municipalities of Marwara, Damoh, Saugor, Seoni, and Mandla, and the cantonment and railway settlement of Saugor.	1
Chhattisgarh Division (Urban)	Ditto	The municipalities and railway settlements of Raipur, Dhamtari, and Bilaspur, and the municipality of Drug.	1
Nerbudda Division (Urban)	Ditto	The municipalities of Hoshangabad, Harda, Khandwa, Burhanpur, Narsinghpur, and Chhindwara, and the railway settlements of Harda and Chhindwara.	1
Nagpur City <i>cum</i> Kamptee	Ditto	The municipality of Nagpur and the Lump Yard of the Great Indian Peninsula Railway at Nagpur, and the cantonment of Kamptee.	2
Nagpur Division (Urban)	Ditto	The municipalities of Umrer, Wardha, Hinganghat, Arvi, Chanda, Warora, Bhandara, and the municipalities and railway settlements of Gondia and Balaghat.	1
Jubbulpore District (South)	Non-Muham- madan Rural	The Jubbulpore and Patan Tahsils of the Jubbulpore District.	1

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>
Jubbulpore District (North)	Non-Muhammadian Rural	The Jubbulpore District, excluding the Jubbulpore and Patna Tahsils.	1
Damoh District . . .	Ditto	The District of Damoh . . . . .	1
Saugor District . . .	Ditto	The District of Saugor . . . . .	1
Seoni District . . .	Ditto	The District of Seoni . . . . .	1
Raipur District (North)	Ditto	The Raipur and Baloda Bazar Tahsils of the Raipur District	1
Raipur District (South)	Ditto	The Dhamtari and Mahasamund Tahsils of the Raipur District.	1
Bilaspur District . . .	Ditto	The District of Bilaspur . . . . .	1
Drug District . . .	Ditto	The District of Drug . . . . .	1
Hoshangabad District . . .	Ditto	The District of Hoshangabad . . . . .	1
Nimar District . . .	Ditto	The District of Nimar . . . . .	1
Narsinghpur District . . .	Ditto	The District of Narsinghpur . . . . .	1
Chhindwara District . . .	Ditto	The District of Chhindwara . . . . .	1
Betul District . . .	Ditto	The District of Betul . . . . .	1
Nagpur District (East)	Ditto	The Nagpur and Ramtek Tahsils of the Nagpur District.	1
Nagpur District (West)	Ditto	The District of Nagpur, excluding the Tahsils of Nagpur and Ramtek.	1
Wardha Tahsil . . .	Ditto	The Wardha Tahsil of the Wardha District.	1
Wardha District . . .	Ditto	The District of Wardha, excluding the Tahsil of Wardha.	1
Chanda District . . .	Ditto	The District of Chanda, excluding the Sironcha Tahsil.	1
Bhandara District . . .	Ditto	The District of Bhandara . . . . .	1
Balaghat District . . .	Ditto	The District of Balaghat . . . . .	1
Jubbulpore Division (Rural)	Muhammadian Rural	The Division of Jubbulpore, excluding the Mandla District, except the Mandla municipality.	1
Chhattisgarh Division (Rural)	Ditto	The Division of Chhattisgarh . . . . .	1
Narbudda Division (Rural)	Ditto	The Division of Narbudda . . . . .	1
Nagpur Division (Rural)	Ditto	The Division of Nagpur, excluding the Sironcha Tahsil of the Chanda District.	1
Jubbulpore and Narbudda Landholders	Landholders	The Jubbulpore and Narbudda Divisions, excluding the Mandla District, except the Mandla municipality.	1
Nagpur and Chhattisgarh Landholders	Ditto	The Nagpur and Chhattisgarh Divisions, excluding the Sironcha Tahsil of the Chanda District.	1
Nagpur University . . .	University	(Non-territorial) . . . . .	1
Central Provinces and Berar Mining Association	Mining	Ditto . . . . .	1
Central Provinces Commerce and Industry	Commerce and Industry	Ditto . . . . .	1

II. The definition in this Schedule of a non-Muhammadian rural constituency by reference to a District or part of a District shall not have the effect of including in that constituency any area included in a non-Muhammadian urban constituency.

III. The following Zamindari and Jagirdari estates shall be excluded from the area of any constituency in which they would otherwise be included, namely (a) the estates specified in Part VI of the First Schedule to the Scheduled Districts Act, 1874; and (b) the following Zamindaries of the Chhattisgarh division, namely, Kanteli, Bhatgoan, Bilaigarh-Kagi, Parpori, Khujji, Deori, Suarmar, Naira, and Kauria.

## CENTRAL PROVINCES.—SCHEDULE II

*(See Rule VIII.)*

## QUALIFICATIONS OF ELECTORS

*Interpretation.*

1. For the purposes of this Schedule—

(a) 'company' means a company incorporated in accordance with law in any part of His Majesty's Dominions.

(b) 'member' in relation to the Central Provinces and Berar Mining Association includes any person entitled to exercise the rights and privileges of membership on behalf of and in the name of any firm, company, or corporation registered as a member ;

(c) 'previous year' means the financial year preceding that in which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules ;

(d) 'urban area' means a municipality, notified area, cantonment, or railway settlement, and includes the Government gun carriage factory estate at Jubbulpore.

(e) a person shall be deemed to have a place of residence in a constituency if he—

(i) has actually dwelt in a house, or part of a house, within the constituency for an aggregate period of not less than 180 days during the calendar year preceding that in which the electoral roll for the time being under preparation is first published under these rules ; or

(ii) has maintained within the constituency for an aggregate period of not less than 180 days during that year a house, or part of a house, as a dwelling for himself in charge of his dependents or servants, and has visited such house during that year.

*Land Records, &c., to be conclusive evidence.*

2. For the purpose of determining any claim to a qualification under this Schedule any entry in the land records or in any municipal records shall be conclusive evidence of the facts stated therein.

*Joint Families.*

3. Where an estate or mahal, or a share of an estate or mahal, or land is held, or where income-tax is paid, jointly by the members of a joint family, the family shall be adopted as the unit for deciding whether under this Schedule the requisite qualification exists : and, if it does exist, the manager of the family shall be qualified as an elector :

Provided that the entry on an electoral roll of a person in his capacity as the manager of a joint family shall not disqualify him as an elector in his individual capacity.

*Occupation of a Building.*

4. For the purposes of this Schedule a person who occupies a house or building, other than a house or building in any military or police lines, or part of such a house or building, by virtue of any office, service, or employment shall, if the house or building is not inhabited by the person in whose service or employ he is, be deemed to occupy the house or building as a tenant.

## GENERAL CONSTITUENCIES

*Urban Constituencies.*

5. A person shall be qualified as an elector of an urban constituency who is not a Muhammadan and who has a place of residence in the constituency or within two miles of the boundary thereof, and who—

(a) is in the constituency the owner or tenant of a house or building, or part of a house or building, of which the annual rental value is not less than Rs. 36 :

Provided that, where a house or building or part of a house or building is held by two or more persons in shares, no person shall be qualified in respect of a share the annual rental value of which is less than Rs. 36 ; or

(b) in constituencies where the rental value of a house or building is not the basis of municipal taxation, was in the previous year assessed to a municipal tax on an *haisiyat* of not less than Rs. 200 ; or

(c) was in the previous year assessed to income tax ; or

(d) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces ; or

(e) has any of the qualifications based on the holding of land or of a village office, hereinafter prescribed for an elector of a rural constituency.

*Rural Constituencies.*

6. A person shall be qualified as an elector for a rural constituency who has a place of residence in the constituency, and who—

(a) is, in an urban area, the owner or tenant of a house or building, or part of a house or building, of which the annual rental value is not less than Rs. 36 :

Provided that, where a house or building or part of a house or building is held by two or more persons in shares, no person shall be qualified in respect of a share the annual rental value of which is less than Rs. 36 ;

(b) was, in an urban area where the rental value of a house or building is not the basis of municipal taxation, assessed in the previous year to a municipal tax on an *haisiyat* of not less than Rs. 200 ; or

(c) is a lambardar of a mahal or patti ; or

(d) is a proprietor or thekadar of an estate or mahal, or share of an estate or mahal, the land revenue or kamiljama of which is not less than Rs. 100 ; or

(e) holds as a proprietor or thekadar in proprietary right, sir land or khud-kasht or, as a malik-makbuza, raiyat or tenant, agricultural land, the assessed or assessable revenue or rent of which is not less—

(i) in the case of land in the Raipur, Bilaspur, Drug, Chanda, and Betul Districts, than Rs. 30, or

(ii) in the case of land in the Bhandara, Balaghat, Nimar, Chhindwara, and Seoni Districts, than Rs. 40, or

(iii) in the case of land in any other District, than Rs. 50 ; or

(f) was in the previous year assessed to income tax ; or

(g) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces :

Provided that—

(i) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency ; and

(ii) no Muhammadan shall be qualified as an elector for a non-Muhammadan constituency.

*Explanation.*—For the purposes of clause (e) 'tenant' shall not include a sub-tenant or ordinary tenant of sir land.

## SPECIAL CONSTITUENCIES

*Landholders' Constituencies.*

7. A person shall be qualified as an elector for a Landholders' constituency who has a place of residence in the constituency and holds in the constituency agricultural land in proprietary right, and who—

- (a) is the holder of a hereditary title recognized by Government ; or
- (b) is the owner of an estate as defined in Section 2 (3) of the Central Provinces Land Revenue Act, 1917 ; or
- (c) holds in proprietary right land of which the land revenue or kamiljama is not less than Rs. 3,000 per annum.

*The University Constituency.*

8. A person shall be qualified as an elector for the Nagpur University constituency who has a place of residence in the Central Provinces or Berar and who is—

- (a) a graduate of seven years' standing of the Nagpur University ; or
- (b) a graduate of seven years' standing of the Allahabad University, having graduated before the establishment of the Nagpur University from a college situated in the Central Provinces ; or
- (c) a graduate of seven years' standing of the Calcutta University having graduated from a college situated in the Central Provinces at a time when such college was affiliated to the Calcutta University ; or
- (d) a Fellow or Honorary Fellow of the Nagpur University ; or
- (e) a Fellow or Honorary Fellow of the Allahabad University having been appointed as such before the establishment of the Nagpur University ; or
- (f) a Fellow or Honorary Fellow of Calcutta University having been appointed as such before the affiliation to the Allahabad University of the colleges situated in the Central Provinces.

*The Mining Constituency.*

9. A person shall be qualified as an elector for the Central Provinces and Berar Mining Association constituency who is a member of the Central Provinces and Berar Mining Association.

*The Commerce and Industry Constituency.*

10. A person shall be qualified as an elector for the Central Provinces Commerce and Industry constituency who—

- (a) is either the owner of a factory situated in the Central Provinces and which is subject to the provisions of the Indian Factories Act, 1911, or in which not less than two hundred persons are ordinarily employed, or a person appointed by the owner of such a factory for the purpose of voting on his behalf ; or
- (b) has been appointed for the purpose of voting by any company having a place of business in the Central Provinces and having a paid-up capital of not less than Rs. 25,000.

## ASSAM RULES

### *Composition of Legislative Council.*

III. The Legislative Council of the Governor of Assam shall consist of—

- (1) the members of the Executive Council *ex-officio* ;
- (2) thirty-nine elected members ; and
- (3) such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to fourteen : of the members so nominated—
  - (a) not more than seven may be officials and
  - (b) two shall be non-official persons nominated to represent respectively the following classes, namely :—
    - (i) the labouring classes ; and
    - (ii) the inhabitants of backward tracts.

For the purpose of selecting persons to be nominated under sub-clause (b) of clause (3) of this rule, the Governor may, at his discretion, make regulations providing for their selection by the communities concerned.

### *Special Qualifications for Election in case of certain Constituencies.*

VI. A person shall not be eligible for election as a member of the council to represent—

- (a) the Shillong constituency or a non-Muhammadan or Muhammadan rural constituency (which constituencies are hereinafter in these rules referred to as general constituencies) unless his name is registered on the electoral roll of the constituency or of another constituency in the province ; or
- (b) a Planting, or Commerce and Industry constituency (which constituencies are hereinafter in these rules referred to as special constituencies) unless his name is registered on the electoral roll of the constituency.

### *Qualifications of Electors.*

VIII.—(1) The qualifications of an elector for a general constituency shall be such qualifications based on—

- (i) residence, and
- (ii) save in the case of the Shillong constituency, community, and
- (iii) (a) assessment to municipal or cantonment rates or taxes, or
- (b) assessment to tax in a union under Chapter III of the Bengal Municipal Act, 1876, or
- (c) assessment to chaukidari tax under the Village Chaukidari Act, 1870, or
- (d) assessment to income-tax, or
- (e) military service, or
- (f) the holding of land,

as are specified in Schedule II in the case of that constituency.

(2) The qualifications of an elector for a special constituency shall be the qualification specified in Schedule II in the case of that constituency.

## ASSAM.—SCHEDULE I

(See Rule IV.)

## LIST OF CONSTITUENCIES

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Shillong . . . . .	General Urban	The municipality and cantonment of Shillong.	1
Silchar . . . . .	Non-Muham- madan Rural	The Silchar sub-division of the Cachar District.	1
Hailakandi . . . . .	Ditto	The Hailakandi sub-division of the Cachar District.	1
Sylhet Sadr . . . . .	Ditto	The Sadr sub-division of the Sylhet District.	1
Sunamganj . . . . .	Ditto	The Sunamganj sub-division of the Sylhet District.	1
Habiganj (North) . . . . .	Ditto	The Habiganj (North) sub-division of the Sylhet District.	1
Habiganj (South) . . . . .	Ditto	The Habiganj (South) sub-division of the Sylhet District.	1
South Sylhet . . . . .	Ditto	The South Sylhet sub-division of the Sylhet District.	1
Karimganj . . . . .	Ditto	The Karimganj sub-division of the Sylhet District.	1
Dhubri . . . . .	Ditto	The Dhubri sub-division of the Goalpara District.	1
Goalpara . . . . .	Ditto	The Goalpara sub-division of the Goalpara District.	1
Gauhati . . . . .	Ditto	The Gauhati sub-division of the Kamrup District.	1
Barpeta . . . . .	Ditto	The Barpeta sub-division of the Kamrup District.	1
Tezpur . . . . .	Ditto	The Tezpur sub-division of the Darrang District.	1
Mangaldai . . . . .	Ditto	The Mangaldai sub-division of the Darrang District.	1
Nowgong . . . . .	Ditto	The Nowgong District . . . . .	1
Sibsagar . . . . .	Ditto	The Sibsagar sub-division of the Sibsagar District.	1
Jorhat . . . . .	Ditto	The Jorhat sub-division of the Sibsagar District.	1
Golaghat . . . . .	Ditto	The Golaghat sub-division of the Sibsagar District.	1
Dibrugarh . . . . .	Ditto	The Dibrugarh sub-division of the Lakhimpur District.	1
North Lakhimpur . . . . .	Ditto	The North Lakhimpur sub-division of the Lakhimpur District.	1
Cachar . . . . .	Muhammadan Rural	The Cachar District . . . . .	1
Sylhet Sadr (North) (Muhammadan)	Ditto	The Sadr (North) sub-division of the Sylhet District.	1
Sylhet Sadr (South) (Muhammadan)	Ditto	The Sadr (South) sub-division of the Sylhet District.	1
Sunamganj (Muham- madan)	Ditto	The Sunamganj sub-division of the Sylhet District.	1
Habiganj (North) (Mu- hammadan)	Ditto	The Habiganj (North) sub-division of the Sylhet District.	1
Habiganj (South) (Mu- hammadan)	Ditto	The Habiganj (South) sub-division of the Sylhet District.	1
South Sylhet (Muham- madan)	Ditto	The South Sylhet sub-division of the Sylhet District.	1
Karimganj (Muham- madan)	Ditto	The Karimganj sub-division of the Sylhet District.	1

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>
Dhubri (Muhammadan)	Muhammadan Rural	The Dhubri sub-division of the Goalpara District, excluding South Salmara Thana.	1
Goalpara <i>cum</i> South Salmara	Ditto	The Goalpara sub-division of the Goalpara District with the South Salmara Thana.	1
Kamrup and Darrang <i>cum</i> Nowgong	Ditto	The Districts of Kamrup, Darrang, and Nowgong.	1
Sibsagar <i>cum</i> Lakhimpur	Ditto	The Districts of Sibsaagar and Lakhimpur.	
Assam Valley Planting	Planting	Assam Valley . . . . .	3
Surma Valley Planting	Ditto	Surma Valley . . . . .	2
Commerce and Industry	Commerce and Industry	(Non-territorial) . . . . .	1

## ASSAM.—SCHEDULE II

## QUALIFICATIONS OF ELECTORS

*Definitions.*

## 1. For the purposes of this Schedule—

- (a) 'company' means a company incorporated in accordance with law in any part of His Majesty's Dominions.
- (b) 'estate' means an estate as defined in section 2 of the Assam Labour and Emigration Act, 1901 ;
- (c) 'manager' in relation to a tea estate includes an assistant manager in separate charge thereof ;
- (d) 'previous year' means the financial year preceding that in which the electoral roll, or the list of amendments thereto as the case may be, for the time being under preparation is first published under these rules.

## GENERAL CONSTITUENCIES

*Shillong Urban Constituency.*

2. A person shall be qualified as an elector for the Shillong constituency who has during the previous year resided within the constituency and who—

- (a) was in the previous year assessed in respect of municipal or cantonment rates or taxes to an aggregate amount of not less than Rs. 3 ; or
- (b) was in the previous year assessed to income tax ; or
- (c) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces or of the Assam Rifles.

*Rural Constituencies (Non-Muhammadan and Muhammadan).*

3. A person shall be qualified as an elector for a rural constituency who has during the previous year resided within the constituency and who—

- (a) was in the previous year assessed in respect of municipal or cantonment rates or taxes to an aggregate amount of not less than Rs. 3, or in the case of an assessment in the Nowgong Municipality, of not less than Rs. 2, or, in the case of an assessment in the Sylhet Municipality, of not less than Rs. 1-8-0 ; or
- (b) was in the previous year assessed to a tax of not less than Re. 1 in a union under Chapter III of the Bengal Municipal Act, 1876 ; or
- (c) in the case of constituencies in the Sylhet, Cachar, and Goalpara Districts



was in the previous year assessed to a chaukidari tax of not less than Re. 1 under the Village Chaukidari Act, 1870 ; or

(d) in the case of any constituency other than those referred to in clause (c)—

(i) owned land the land revenue upon which has been assessed or is assessable at not less than Rs. 15 per annum, or

(ii) is liable to pay a local rate of not less than Re. 1 per annum ; or

(e) was in the previous year assessed to income tax ; or

(f) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces or of the Assam Rifles :

Provided that—

(i) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and

(ii) no Muhammadan shall be qualified as an elector for a non-Muhammadan constituency.

#### *Joint Families.*

4. Where property is held or payments are made jointly by the members of a joint family, the family shall be adopted as the unit for deciding whether under this Schedule the requisite qualification exists ; and, if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof and in other cases the member authorized in that behalf by the family concerned.

Provided that any other member of such family shall also be qualified if the proportion of the joint property which corresponds with his share therein would be sufficient so to qualify him if held separately.

### SPECIAL CONSTITUENCIES.

#### *Planting Constituencies.*

5. A person shall be qualified as an elector for the Assam Valley Planting constituency who is the superintendent or manager of, or an engineer or medical officer employed on, a tea estate in the Assam Valley, and a person shall be qualified as an elector in the Surma Valley Planting constituency who is the superintendent or manager of, or an engineer or medical officer employed on a tea estate in the Surma Valley.

#### *Commerce and Industry Constituencies.*

6. A person shall be qualified as an elector for the Commerce and Industry constituency who—

(a) is the owner of a factory, other than a tea factory, situated in Assam, and which is subject to the provisions of the Indian Factories Act, 1911, or is a person appointed by the owner of such a factory for the purpose of voting on his behalf ; or

(b) has been appointed for the purpose of voting by any company, other than a company principally engaged in the tea industry, having a place of business in Assam and having a paid-up capital of not less than Rs. 25,000.

## BURMA RULES

### *Composition of Legislative Council.*

3. The Legislative Council of the Governor of Burma shall consist of—

- (1) the members of the Executive Council *ex-officio* ;
- (2) seventy-nine elected members ;
- (3) such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to twenty-four ; of the members so nominated—
  - (a) not more than fourteen may be officials, and
  - (b) two shall be persons nominated to represent respectively the following classes or interests, namely—
    - (i) Indian commerce, and
    - (ii) the labouring classes.

### *Special Qualifications for Election in case of certain Constituencies.*

6.—(1) (a) No person shall be eligible for election as a member of the Council to represent a general constituency unless his name is registered on the electoral roll of a constituency in the province ; and unless in the case of a Karen, Indian, European, or Anglo-Indian constituency, he is himself a Karen, an Indian, a European, or an Anglo-Indian, as the case may be.

(b) No person shall be eligible for election as a member of the Council to represent a special constituency unless his name is registered on the electoral roll of the constituency.

(2) For the purposes of these rules—

- (a) ‘ general constituency ’ means any constituency constituted by these rules other than a University or Commerce constituency ; and
- (b) ‘ special constituency ’ means a University or Commerce constituency constituted by these rules.

### *Qualifications of Electors.*

8.—(1) The qualifications of an elector for a general constituency shall be such qualifications based on—

- (i) community,
- (ii) residence, and
- (iii) (a) occupation of a building, or
  - (b) payment of municipal or cantonment taxes or capitation-tax or land-rate in lieu of capitation-tax, or
  - (c) payment of land revenue, or of a tax on circumstances and property under the Burma Rural Self-Government Act, 1921, or
  - (d) entry in the capitation-tax or the thathameda-tax assessment roll, or
  - (e) assessment to income-tax, or
  - (f) military service, or
  - (g) the possession of immovable property,

as are specified in Schedule II in the case of that constituency.

(2) The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule II in the case of that constituency.

## BURMA.—SCHEDULE I

(See Rule IV.)

## I.—LIST OF CONSTITUENCIES

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Members.</i>
Akyab Town . . .	General Urban	The Akyab Municipality . . .	1
Bassein Town . . .	Ditto	The Bassein Municipality . . .	1
Henzada Town . . .	Ditto	The Henzada Municipality . . .	1
Mandalay Town . . .	Ditto	The Mandalay Municipality and Cantonment.	3
Moulmein . . . .	Ditto	The Moulmein Municipality . . .	2
Prome Town . . . .	Ditto	The Prome Municipality . . .	1
Rangoon . . . . .	Ditto	The Rangoon Municipality and Cantonment.	4
Tavoy Town . . . .	Ditto	The Tavoy Municipality . . .	1
Akyab Indian Community	Indian Urban	The Akyab Municipality . . .	1
Bassein Indian Community	Ditto	The Bassein Municipality . . .	1
Mandalay Indian Community	Ditto	The Mandalay Municipality and Cantonment.	1
Moulmein Indian Community	Ditto	The Moulmein Municipality . . .	1
Rangoon Indian Community	Ditto	The Rangoon Municipality and Cantonment.	4
Amherst Karen Community	Karen Rural	The Amherst District, excluding the Moulmein Municipality.	1
Bassein Karen Community	Ditto	The Bassein District, excluding the Bassein Municipality.	1
Ma-u-bin Karen Community	Ditto	The Ma-u-bin District . . . .	1
Myaungmya Karen Community	Ditto	The Myaungmya District . . . .	1
Thaton Karen Community	Ditto	The Thaton District . . . . .	1
Amherst . . . . .	General Rural	The Amherst District, excluding the Moulmein Municipality.	1
Arakan . . . . .	Ditto	The Akyab, Kyaukpyu, and Sando-way Districts, excluding the Akyab Municipality.	3
Bassein District . . .	Ditto	The Bassein District, excluding the Bassein Municipality.	1
Hanthawaddy . . . .	Ditto	The Hanthawaddy District . . .	2
Henzada District . . .	Ditto	The Henzada District, excluding the Henzada Municipality.	2
Insein . . . . .	Ditto	The Insein District . . . . .	1
Katha . . . . .	Ditto	The Katha District, excluding the areas subject to the Kachin Hill Tribes Regulation, 1895.	1
Kyaukse . . . . .	Ditto	The Kyaukse District . . . . .	1
Lower Chindwin . . .	Ditto	The Lower Chindwin District . . .	2
Magwe . . . . .	Ditto	The Magwe District . . . . .	2
Mandalay District . . .	Ditto	The Mandalay District, excluding the Mandalay Municipality and Cantonment.	1
Ma-u-bin . . . . .	Ditto	The Ma-u-bin District . . . . .	1
Meiktila . . . . .	Ditto	The Meiktila District . . . . .	2
Mergui . . . . .	Ditto	The Mergui District . . . . .	1
Minbu . . . . .	Ditto	The Minbu District . . . . .	1
Myaungmya . . . . .	Ditto	The Myaungmya District . . . . .	1
Myingyan . . . . .	Ditto	The Myingyan District . . . . .	2
Pakokku . . . . .	Ditto	The Pakokku District . . . . .	2

<i>Name of Constituency.</i>	<i>Class of Constituency.</i>	<i>Extent of Constituency.</i>	<i>No. of Mem- bers.</i>
Pegu . . . . .	General Rural	The Pegu District . . . . .	2
Prome District . . . .	Ditto	The Prome District, excluding the Prome Municipality.	1
Pyapon . . . . .	Ditto	The Pyapon District . . . . .	1
Sagaing . . . . .	Ditto	The Sagaing District . . . . .	2
Shwebo . . . . .	Ditto	The Shwebo District . . . . .	2
Tavoy District . . . .	Ditto	The Tavoy District, excluding the Tavoy Municipality.	1
Tharrawaddy . . . . .	Ditto	The Tharrawaddy District . . . .	2
Thaton . . . . .	Ditto	The Thaton District . . . . .	1
Thayetmyo . . . . .	Ditto	The Thayetmyo District . . . . .	1
Toungoo . . . . .	Ditto	The Toungoo District . . . . .	2
Yamethin . . . . .	Ditto	The Yamethin District . . . . .	2
Anglo-Indian . . . . .	Anglo-Indian	Burma . . . . .	1
European . . . . .	European	Burma . . . . .	1
Burma Chamber of Commerce	Commerce	Non-territorial . . . . .	2
Burmese Chamber of Commerce	Ditto	Ditto . . . . .	1
Chinese Chamber of Commerce	Ditto	Ditto . . . . .	1
Rangoon Trades Association	Ditto	Ditto . . . . .	1
Rangoon University . .	University	Ditto . . . . .	1

## BURMA.—SCHEDULE II

(See Rule 8.)

## QUALIFICATION OF ELECTORS

*Definitions.*

## 1. In this Schedule—

- (a) 'an Anglo-Indian' means any person, being a British subject and resident in British India,—
- (i) of European descent in the male line who is not a European, or
  - (ii) of mixed Asiatic and non-Asiatic descent whose father, grand-father, or more remote ancestor in the male line was born in the Continent of Europe, Canada, Newfoundland, Australia, New Zealand, the Union of South Africa, or the United States of America, and who is not a European :
- (b) 'a European' means any person of European descent in the male line, being a British subject and resident in British India, who either was born in or has a domicile in the United Kingdom or in any British possession or in any State in India, or whose father was so born or has or had, up to the date of the birth of the person in question, such a domicile ;
- (c) 'a Karen' includes a Taungthu, and means a person belonging to any race which the local Government may, by notification in the Gazette, declare to be a Karen or Taungthu race for the purpose of these rules ;
- (d) 'an Indian' means any person of Indian descent in the male line, being a British subject and resident in British India, who either was born in or has a domicile in British India, excluding Burma, or in any State in India, excluding the States in Karenni, or whose father, or grandfather, was so born or has or had, up to the date of the birth

of the person in question, or of the father of the person in question, as the case may be, such a domicile ;

- (e) 'previous agricultural year' and 'previous financial year' mean respectively the agricultural year and the financial year preceding that in which the electoral roll for the time being under preparation is first published under these rules ;
- (f) a person shall be deemed to have a place of residence within the limits of a constituency or within two miles of the boundary thereof, as the case may be, if such person—
  - (a) ordinarily lives within these limits or within two miles of the boundary thereof, as the case may be, or
  - (b) maintains a dwelling house, ready for occupation, within those limits or within two miles of the boundary thereof, as the case may be, and occasionally occupies it.

*Explanation.*—A person may have places of residence within the limits of more than one constituency at the same time.

#### GENERAL CONSTITUENCIES

##### *Qualifications based upon Community.*

2.—(1) No person shall be qualified as an elector—

- (a) for a Karen constituency unless he is a Karen ;
- (b) for a European constituency unless he is a European ;
- (c) for an Anglo-Indian constituency unless he is an Anglo-Indian ;
- (d) for an Indian constituency unless he is an Indian ; or
- (e) for any other general constituency if he is a European or an Anglo-Indian.

(2) No Karen shall be qualified as an elector for any of the following constituencies, namely the Amherst, Bassein District, Ma-u-bin, Myaungmya and Thaton general rural constituencies.

(3) No Indian shall be qualified as an elector for any of the following general urban constituencies, namely : Akyab, Bassein, Mandalay, Moulmein, Rangoon.

##### *Urban Constituencies.*

3. Subject to the provisions of paragraph 2 of this Schedule a person shall be qualified as an elector for an urban constituency, who—

- (1) has a place of residence in the constituency or within two miles of the boundary thereof, and who—
  - (a) possesses immovable property in the constituency of the value of not less than Rs. 200, or
  - (b) has paid during and in respect of the previous financial year municipal taxes or cantonment taxes, which together with any capitation-tax or land-rate in lieu of capitation-tax paid by him in respect of the previous agricultural year, amount to not less than Rs. 4, or
  - (c) is the occupier of a house or building in the constituency of which the rental value is not less than Rs. 60 per annum, whether the rent is paid by the person himself or whether he is living rent-free in a house belonging to his employer or hired by his employer on his behalf, or
- (2) has a place of residence in the constituency and possesses any of the qualifications hereinafter prescribed for an elector of a rural constituency.

##### *Rural Constituencies.*

4. Subject to the provisions of paragraph 2 of this Schedule, a person shall be qualified as an elector for a rural constituency who has a place of residence in the constituency and—

- (a) has been entered in the capitation-tax assessment roll as liable to pay capitation-tax of not less than Rs. 5, or in the thathameda-tax assessment roll of the previous agricultural year as head of the household and liable to pay thathameda-tax, and has not been exempted from payment of capitation-tax or thathameda-tax, as the case may be, on the ground of poverty or of being an immigrant from a country outside Burma, or
- (b) has paid during and in respect of the previous agricultural or financial year a tax on circumstances and property under section 26 of the Burma Rural Self-Government Act, 1921, or
- (c) has paid during and in respect of the previous agricultural year land revenue of not less than Rs. 5, or
- (d) was in the previous financial year assessed to income-tax, or
- (e) in the case of a person possessing a place of residence within the municipalities of Toungoo, Kyaukpyu, or Thayetmyo, possesses qualifications prescribed in sub-clauses (a), (b), or (c) of clause (1) of paragraph 3 of this Schedule, or
- (f) is a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

*The European and Anglo-Indian Constituencies.*

5. Subject to the provisions of paragraph 2 of this Schedule, a person shall be qualified as an elector of a European or Anglo-Indian constituency who has a place of residence in Burma and has any of the qualifications prescribed for an elector of an urban or rural constituency.

*Fiduciary Capacity.*

6. A person shall not be qualified as an elector for a general constituency by virtue of any property held or payment made as a trustee, administrator, receiver, or guardian or in any other fiduciary capacity.

SPECIAL CONSTITUENCIES

*The University Constituency.*

7. A person shall be qualified as an elector for the Rangoon University constituency who has a place of residence in Burma and is a Fellow or an Honorary Fellow or a registered graduate of the University.

*Commerce Constituencies.*

8. Chamber members and members of the Burma Chamber of Commerce and of the Burmese Chamber of Commerce and of the Chinese Chamber of Commerce and of the Rangoon Trades Association shall be qualified respectively as electors of the constituency comprising the Chamber or Association of which they are such Chamber members or members: provided that no person shall be so qualified who has not a place of residence in Burma.

*Explanation.*—‘Chamber member’ and ‘member’ includes any person entitled to exercise the rights and privileges of Chamber membership or membership on behalf of any firm, company, or other corporation registered as such member.

It is suggested that in these blank pages might be pasted any regulations made by the Local Government which differ from those given in Appendix II A.























# APPENDIX II

## A

### REGULATIONS UNDER RULE XV

#### *The Appointment of a Returning Officer.*

1. The returning officers for the constituencies mentioned in the first column of the Schedule hereto annexed shall be the persons respectively specified in the corresponding entry in the second column thereof.

2. (1) The persons specified in the third column of the said Schedule may, subject to the control of the returning officer, perform all or any of the functions of the returning officer in the constituencies respectively specified in the corresponding entry in the first column thereof :

Provided that no such person shall perform any of the functions of a returning officer which relate to the acceptance of a nomination paper or to the scrutiny of nominations or to the counting of votes, unless the returning officer is unavoidably prevented from performing the same, in which case the said functions may be performed in any constituency by the person first specified in the corresponding entry in the third column of the Schedule.

(2) References to the returning officer in these regulations shall, unless a contrary intention appears, be deemed to include any person when performing any duty or function which he is authorized to perform under sub-regulation (1).

#### *Scrutiny of Nominations.*

3. On the date appointed by the local Government for the scrutiny of nominations under sub-rule (2) of rule XI the candidates, their election agents, one proposer and one seconder of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint, and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner prescribed in rule XI.

4. (1) The returning officer shall examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds :—

- (i) that the candidate is ineligible for election under rule V or rule VI ;
- (ii) that a proposer or seconder is disqualified from subscribing a nomination paper under sub-rule (4) of rule XI ;
- (iii) that there has been any failure to comply with any of the provisions of rule XI or rule XII ;
- (iv) that the candidate or any proposer or seconder is not identical with the person whose electoral number is given in the nomination paper as the number of such candidate, proposer or seconder, as the case may be ;
- (v) that the signature of the candidate or of any proposer or seconder is not genuine or has been obtained by fraud.

(2) For the purposes of this regulation,—

- (a) the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the

candidate is disqualified under rule V or rule VI or, as the case may be, that the proposer or seconder is disqualified under sub-rule (4) of rule XI, and

- (b) where a person has subscribed whether as proposer or seconder a larger number of nomination papers than there are vacancies to be filled, those of the papers so subscribed which have been first received, up to the number of vacancies to be filled, shall be deemed to be valid.
- (3) Nothing contained in clause (ii), clause (iii), clause (iv), or clause (v) of sub-regulation (1) shall be deemed to authorize the refusal of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

5. (1) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(2) The scrutiny shall be completed on the day appointed in this behalf under clause (b) of sub-rule (2) of rule XI and no adjournment of the proceedings shall be allowed.

6. On completion of the scrutiny of nominations and after the expiry of the period within which candidatures may be withdrawn under sub-rule (8) of rule XI, the returning officer shall forthwith prepare a list of valid nominations and cause it to be affixed in some conspicuous place in his office.

7. If the number of duly nominated candidates is greater than the number of vacancies the returning officer shall forthwith publish in the *Gazette*, and in such other manner as the local Government may prescribe, and in such places in the constituency as he may consider necessary, the names of the candidates as given in the nomination papers in alphabetical order [and the colour or symbol, if any, allotted to each candidate<sup>1</sup>].

#### *Voting.*

8. The local Government shall appoint the hour at which the poll shall commence and the hour at which it shall close on the date appointed for the poll under clause (c) of sub-rule (2) of rule XI. The hours so fixed shall be published by notification in the *Gazette* and in such other manner as the local Government may direct.

9. (1) The returning officer shall select for each constituency as many polling stations as he thinks necessary and shall publish, in such manner as the local Government may prescribe, a list showing the polling stations so selected, and the polling areas for which they have respectively been selected.

(2) The returning officer shall appoint a presiding officer for each polling station and such other persons (hereinafter referred to as polling officers) to assist the presiding officer as he thinks necessary.

10. (1) The presiding officer shall keep order at the polling station, shall see that the election is fairly conducted, shall regulate the number of electors to be admitted at one time, and shall exclude all other persons except—

- (a) the polling officers, the candidates, and one agent of each candidate (hereinafter referred to as the polling agent) appointed in writing by the candidate, and authorized in this behalf by the returning officer,
- (b) the police or other public servants on duty, and
- (c) such other persons as the presiding officer may from time to time admit for the purpose of identifying electors.

(2) The presiding officer shall close the polling station at the hour appointed

<sup>1</sup> [ ] In Bihar and Orissa and Central Provinces only.

in that behalf by the local Government under regulation 8, so as to prevent the admission thereto of any voter after that hour.

11. No ballot paper shall be issued after the closing hour appointed under regulation 8, but any voter who has received his ballot paper before that hour shall be allowed a reasonable opportunity to record his vote.

12. Each polling station shall be furnished with such number of compartments, in which voters can record their votes screened from observation, as the returning officer thinks necessary.

13. (1) The returning officer shall provide at each polling station materials sufficient for the purpose of enabling voters to mark the ballot papers, instruments for stamping the official mark on such papers, as many ballot boxes as may be necessary, and copies of the electoral roll or of such part thereof as contains the names of the electors entitled to vote at such station.

(2) The official mark shall be kept secret, and a period of not less than seven years shall intervene between the use of the same official mark at elections for the same constituency.

14. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, immediately before the commencement of the poll, shall show the ballot box empty to such persons as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, [and shall place it in his view for the receipt of ballot papers <sup>1</sup>] and keep it so locked and sealed.

15. Before the polling station is open for the recording of votes, the presiding officer shall read to such persons as may be present the provisions of section 14 of the Election Offences and Inquiries Act, 1920, and shall explain the substance thereof in the vernacular of the district.

16. Immediately before a ballot paper is delivered to an elector, it shall be marked on the back with the official mark, and the number, name and description of the elector as stated in the electoral roll shall be called out, and the number of the elector shall be entered on the counterfoil, and a mark shall be placed in a copy of the electoral roll against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received. On the counterfoil shall be entered the name of the constituency and the name or distinctive number of the polling station.

17. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark <sup>2</sup> his paper, and fold it up so as to conceal his vote, and, after showing to the presiding officer the official mark, shall put his ballot paper, so folded up, into the ballot box. Every elector shall vote without undue delay and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

18. The presiding officer shall give such assistance as may be required to any elector who is by reason of infirmity or illiteracy unable to vote in the manner prescribed.

19. At any time before a ballot paper is delivered to an elector, the presiding officer or polling officer may, of his own accord, if he has reason to doubt the identity of the elector or his right to vote at such station, and shall, if so required by a candidate or polling agent, put to the elector the following questions :—

(1) Are you the person enrolled as follows (reading the whole entry from the roll) ?

(2) Have you already voted at the present election in this constituency ?  
and (at a general election),

<sup>1</sup> [ ] Omit for Central Provinces and Bihar and Orissa.

<sup>2</sup> Different wording will be necessary for Bihar and Orissa and Central Provinces.

(3) Have you already voted at this general election for the Legislative Council in any other general constituency ?  
and the elector shall not be supplied with a ballot paper unless he answers the first question in the affirmative and the other questions in the negative.

20. The ballot paper shall be in Form I annexed to these regulations. The ballot papers shall be serially numbered, the serial number being printed on the face of the counterfoil and on the back of the ballot paper.

21. If a person representing himself to be a particular elector named on the electoral roll applies for a ballot paper after another person has voted as such elector, the applicant shall, after duly answering such questions as the presiding officer may ask, be entitled to mark a ballot paper in the same manner as any other voter. Such ballot paper (hereinafter referred to as a tendered ballot paper) shall be of a colour different from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number on the electoral roll and the name of the electoral area to which the roll relates and shall be set aside in a separate packet and shall not be counted by the returning officer. The name of the voter and his number in the electoral roll and the name or distinctive number of the polling station to which the roll relates shall be entered in a list in Form II annexed to these regulations, which shall bear the heading 'Tendered votes list'. The person tendering such ballot paper shall sign his name and address thereon or affix his thumb impression against the entry in that list.

22. If any polling agent declares and undertakes to prove that any person by applying for a ballot paper has committed the offence of personation, the presiding officer may require such person to enter in the list of challenged votes (which shall be in Form III annexed to these regulations) his name and address or, if he is unable to write, to affix his thumb impression thereto and may further require such person to produce evidence of identification. If such person on being questioned in the manner provided in regulation 18 answers the first question in the affirmative and the other questions in the negative, he shall be allowed to vote after he has been informed of the penalty for personation. The presiding officer shall make a note of the circumstances, and of his decision on the list of challenged votes.

23. A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot conveniently be used as a ballot paper may, on delivering it to the presiding officer and satisfying him of the inadvertence, obtain another ballot paper in place of the spoilt paper, and the latter shall, together with its counterfoil, be marked as cancelled.

24. A presiding officer, polling officer, or polling agent who is on duty at a polling station at which he is not entitled to vote shall, if he is certified by a returning officer to be entitled to vote at the election for the constituency in connexion with which he is employed or for any other constituency, be allowed to record his vote at that polling station. The name of the polling station at which he would otherwise have been entitled to vote shall be entered in the counterfoil of the ballot paper together with his number in the electoral roll for the constituency in which that polling station is situated.

25. Such ballot paper shall be placed in an envelope and sealed by the presiding officer and returned with the certificate referred to in regulation 24 to the returning officer who has granted the same, and such returning officer shall cause such vote to be included among the other votes given for the candidate designated by the voter.

26. The presiding officer of each polling station, as soon as practicable after the close of the poll, shall, in the presence of any candidates or polling agents who may be present, make up into separate parcels and seal with his own seal and the seal of such candidates or agents as may desire to affix their seal :—

- (1) each ballot box in use at each station unopened but with the key attached ;
- (2) the unused ballot papers ;
- (3) the tendered ballot papers ;
- (4) the spoilt ballot papers ;
- (5) the marked copy of the electoral roll ;
- (6) the counterfoils of the ballot papers ;
- (7) the tendered votes list ; and
- (8) the list of challenged votes ;

and shall deliver such packets to the returning officer.

27. The packets shall be accompanied by a statement made by the presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, and ballot papers dealt with under regulation 24.

#### *Counting of Votes.*

28. The returning officer shall as soon as may be practicable after the close of the poll, appoint a date, time and place for the counting of votes and shall give notice in writing thereof to all candidates and election agents.

29. (1) No person shall be allowed to be present at the counting of the votes except the returning officer and such persons as he may appoint to assist him in counting the votes, and such other persons as have a right to be present under sub-rule (6) of rule XIV.

(2) No person shall be appointed to assist in counting the votes who has been employed by or on behalf of any candidate for any purpose whatsoever connected with the election.

30. On the day and at the time appointed under regulation 28 the returning officer shall, before he commences to count the votes, read the provisions of section 14 of the Indian Election Offences and Inquiries Act, 1920, to such persons as may be present, and shall then proceed as follows :—

- (a) The ballot box or boxes relating to each polling station shall be opened one after another, and the returning officer shall take out the papers therefrom, count them or cause them to be counted, and record the number thereof in a statement. Such statement shall not be shown to any candidate or any election agent or other representative of a candidate.
- (b) The returning officer shall then mix together all the ballot papers so taken out from the ballot boxes and distribute them in convenient bundles to the persons appointed to assist in counting the votes.
- (c) When the ballot papers have been so distributed, but not before, the returning officer shall allow the candidates and their agents reasonable opportunity to inspect, without handling, the ballot papers, and shall on every ballot paper which is wholly or partially rejected endorse the word 'rejected'. If any candidate or agent present questions the correctness of the rejection, the returning officer shall also record on the ballot paper the grounds for the rejection. No candidate, election agent or other representative of a candidate shall be allowed to see the serial number on the back of any ballot paper.
- (d) The returning officer shall, as far as practicable, proceed continuously with the counting of the votes ; and shall, during any necessary intervals during which the counting has to be suspended, place the ballot papers, packets and other documents relating to the election under his own seal and the seals of such candidates, election agents or other representatives of candidates as may desire to affix them, and shall cause adequate precautions to be taken for their custody.

31. (1) A ballot paper shall be rejected if—

- (a) it has not on its back the official mark,

- (b) the number of votes recorded thereon exceeds the number of vacancies to be filled,
- (c) no vote is recorded thereon,
- (d) it is void for uncertainty,
- (e) it bears any mark by which the elector can be identified :

Provided that a ballot paper, which has been dealt with under regulation 25, shall not be rejected by reason only of the fact that anything has been written thereon if such writing was reasonably necessary for the purpose of recording the vote given by means of such paper.

(2) The decision of the returning officer as to the validity of a ballot paper shall be final, subject only to reversal on an election petition claiming the seat.

32. The returning officer shall not open the sealed packets of the tendered votes, the marked copy of the electoral roll or the counterfoils of the ballot papers. He shall verify the statement submitted by the presiding officer under regulation 27 by comparing it with the number of counted votes and rejected ballot papers, the unused ballot papers in his possession and the tendered votes list, shall then reclose and reseal each packet which has been opened by him, shall record on each packet a description of its contents and the date of the election to which it refers.

33. The returning officer shall then prepare and certify a return setting forth—

- (1) the result of the verification referred to in regulation 32,
- (2) the names of the candidates for whom valid votes have been given,
- (3) the number of valid votes given for each candidate,
- (4) the name of the candidate elected,
- (5) the number of votes declared invalid, and
- (6) the number of tendered votes given,

and shall permit any candidate or any representative duly authorized under sub-rule (6) of rule XIV to take a copy or an extract from such return.

34. The returning officer shall, after reporting the result of the election under rule XIV, forward the return and all the packets relating to the election in his possession to such officer as may be appointed by the local Government in this behalf.

35. While in the custody of the officer to whom they have been so forwarded, the packets of ballot papers whether counted, rejected or tendered, and of the counterfoils thereof, shall not be opened and their contents shall not be inspected or produced except under the order of a competent Court or of Commissioners appointed to hold an inquiry in respect of an election, but all other documents relating to the election shall be open to public inspection subject to such conditions and to the payment of such fee, if any, as the local Government may impose.

36. The packets aforesaid shall be retained for a period of one year and shall thereafter be destroyed subject to any direction to the contrary made by the local Government, or by a competent Court or by Commissioners appointed to hold an inquiry in respect of an election.

## FORM I

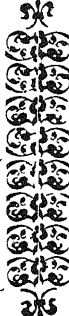
## FORM OF FRONT OF BALLOT PAPER

Counterfoil.

Outerfoil.

Serial No.

Front.

Constituency _____		Roy	
		Chaudhuri	
Number of polling station _____		Chatterji	
		Bannerji	
Number of elector on electoral roll _____		Ghosh	

*Note.*—It is considered important that the whole of the outerfoil of the Ballot Paper should be taken up by the cage containing the names of candidates and spaces for recording votes.

## BACK OF BALLOT PAPER

*Instructions.*

- (1) The number of members for whom you may vote is \_\_\_\_\_
- (2) Place a cross mark thus **X** against the name of \_\_\_\_\_ the candidate \_\_\_\_\_ for whom you wish to vote. each of the candidates
- (3) The mark should be placed against not more than \_\_\_\_\_

Serial No.

## FORM II

## TENDERED VOTES LIST

Polling station. ....

Name of Constituency.	Name of Voter.	Number in Electoral Roll.	Number of votes recorded.

## FORM III

## LIST OF CHALLENGED VOTES

Signature Sheet No. ....

Number on Electoral Roll.	Name.	Signature of voter if literate or thumb impression of voter if illiterate.	Name of identifier, if any.
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*Order of Presiding Officer (in each case).*

**Regulation.**—The return of Election expenses under rule XIX shall be in the following form, and shall be accompanied by the affidavits in the form given in Schedule III to the electoral rules.

## FORM OF RETURN OF ELECTION EXPENSES

For the.....constituency.

Council of State

For the Legislative Assembly .....

Legislative Council of

Receipts.	Rs.	Voucher No.
Received of A. B., candidate for the above constituency. (Or when the candidate is his own election agent) Paid by me, A. B., candidate for the above constituency. Received of . . . . .		
(1)		
(2)		
(3)		
(4)		
&c., &c.		
Total Receipts . . .		
(Here set out the name and description of every person, club, society, or association, whether the candidate or not from whom any money, securities or equivalent of money was received in respect of expenses incurred on account of or in connexion with or incidental to the above election. The amount received from each such person, club, society, &c., to be shown separately.)		





Expenditure.	Rs.	Voucher No.
(1) Paid to ..... as messenger for ..... day's services.		
(2)		
(3)		
(4)		
&c. (The names and descriptions of every agent, clerk, and messenger, and the sum paid to each, must be set out separately either in the account or in a separate list annexed to and referred to in the account with the receipted vouchers of the person employed.)		
(C) THE TRAVELLING EXPENSES AND ANY OTHER EXPENSES INCURRED BY THE CANDIDATE OR HIS ELECTION AGENT ON ACCOUNT OF AGENTS (INCLUDING THE ELECTION AGENT), CLERKS OR MESSENGERS.		
Received by me for travelling expenses as election agent.		
(1) On ..... Rs. ....		
(2) On ..... Rs. ....		
(3) On ..... Rs. ....		
Total . . .		
(If the candidate is his own election agent leave out the above items.)		
(1) Paid to ..... sub-agent of the polling district of ..... as travelling expenses.		
(2)		
(3)		
(4)		
(The name and description of every sub-agent or polling agent and the sum paid to each on account of travelling or any other expenses must be set out separately either in the account or in a separate list annexed to and referred to in the account, which should include purchase of tickets by rail, hire of vehicles, or refreshments provided.)		
(1) Paid to ..... as clerk for travelling expenses.		
(2)		
(3)		
(4)		
(The name and description of every clerk and the sum paid to him on account of travelling or any other expenses must be set out separately either in the account or in a separate list annexed to and referred to in the account, which should include purchase of tickets by rail, hire of vehicles, or refreshments provided.)		
(1) Paid to ..... as messenger for travelling expenses.		
(2)		
(3)		
(4)		

Expenditure.	Rs.	Voucher No.
<p><i>(The name and description of every messenger and the sum paid to him on account of travelling or any other expenses must be set out separately either in the account or in a separate list annexed to and referred to in the account, which should include purchase of tickets by rail, hire of vehicles, or refreshments provided.)</i></p>		
<p>(D) THE TRAVELLING EXPENSES OF PERSONS, WHETHER IN RECEIPT OF SALARY OR NOT, INCURRED IN CONNEXION WITH THE CANDIDATURE, AND WHETHER PAID OR INCURRED BY THE CANDIDATE, HIS ELECTION AGENT OR THE PERSON SO TRAVELLING.</p> <p><i>(Under this head should be included any payments made by the candidate, or by the election agent on account of any person who travels in connexion with the candidature other than persons whose travelling expenses have been shown in the statement under C above.)</i></p>		
<p>(E) THE COST, WHETHER PAID OR INCURRED, OF—</p> <p>(i) printing,</p> <p>(ii) advertising,</p> <p>(iii) stationery,</p> <p>(iv) postage,</p> <p>(v) telegrams, and</p> <p>(vi) rooms hired either for public meetings or as committee rooms.</p>		
<p>(i) Paid on account of <i>Printing</i>—</p> <p>(1) To ..... on</p> <p>(2) To ..... on</p> <p>(3) To ..... on</p> <p>(4) To ..... on</p>		
Total Printing		
<p><i>(The name and description of each person and the nature of the goods supplied, or the work and labour done by each, must be set out separately either in the account or in a separate list annexed to and referred to in the account with receipted vouchers for all sums above Rs. 5.)</i></p>		
<p>(ii) Paid on account of <i>Advertising</i>—</p> <p>(1) To ..... on</p> <p>(2) To ..... on</p> <p>(3) To ..... on</p> <p>(4) To ..... on</p>		
Total Advertising		
<p><i>(The name and description of each person and the nature of the goods supplied, or the work and labour done by each, must be set out separately either in the account or in a separate list annexed to and referred to in the account with receipted vouchers for all sums above Rs. 5.)</i></p>		

Expenditure.	Rs.	Voucher No.
(iii) Paid on account of Stationery—		
(1) To ..... on		
(2) To ..... on		
(3) To ..... on		
(4) To ..... on		
Total Stationery		
<i>(The name and description of each person and the nature of the goods supplied, or the work and labour done by each, must be set out separately either in the account or in a separate list annexed to and referred to in the account with receipted vouchers for all sums above Rs. 5.)</i>		
(iv) Paid on account of Postage.		
<i>(Lump sum may be shown.)</i>		
(v) Paid on account of Telegrams.		
<i>(Lump sum may be shown.)</i>		
(vi) Paid for the hire of rooms . . . . .		
<i>(A room hired for a public meeting or for a committee room or for an office must be named or described so as to identify it, and the name and description of every person to whom any payment was made for each such room, together with the amount paid, must be set out separately either in the account or in a separate list annexed to and referred to in the account.)</i>		
(F) ANY OTHER MISCELLANEOUS EXPENSES WHETHER PAID OR INCURRED.		
Grand Total, Rs. . .		

## B

## VOTING BY POST

Special Regulations applicable (in certain provinces) to :

University Constituencies.

Landholders' Constituencies.

Commerce and Industry Constituencies.

1. On or before such date as may be appointed by the Local Government in this behalf, the returning officer shall send by registered post to each elector a ballot paper, together with an intimation of the date appointed by him for the counting of votes, and shall note on the counterfoil of each ballot paper the name of the elector to whom the ballot paper is sent. The ballot paper, together

with such intimation, shall be sent to the address of the elector as shown in the electoral roll.

2. On or before such date as may be appointed by the Local Government in this behalf, but not later than 5 p.m. on that date, each elector desirous of recording his vote shall sign the declaration on the back of the ballot paper in the presence and at the office of an attesting officer, and the attesting officer shall thereupon attest his signature.

3. The elector shall then proceed to a place set apart for that purpose by the attesting officer, and there shall record his vote on the ballot paper in accordance with the instructions therein, and after placing the ballot paper in an envelope, and closing the same, shall deliver it to the attesting officer.

4. If an elector is unable to read or write, or by reason of some physical defect is incapacitated from recording his vote, the attesting officer shall assist him in such manner as may be necessary to mark the ballot paper and to sign the declaration thereon.

5. The attesting officer shall, as soon as possible, after 5 p.m. of the day appointed as the latest date for the attestation of ballot papers, dispatch all the envelopes so delivered to him to the returning officer by registered post in a packet securely sealed with his official seal, and shall also enclose a list of the electors whose ballot papers he has attested.

6. A ballot paper that is not duly attested, or marked, or on which more than one mark is placed against any candidate's name or on which votes are given to more candidates than there are members to be elected or on which a mark is placed in such a manner as to render it doubtful to which candidate it has been given, shall be invalid.

7.—(1) The returning officer shall appoint a day for the counting of votes, and shall give notice thereof to the candidates.

(2) On the day appointed the returning officer shall—

- (a) after scrutiny, separate or cause to be separated the ballot papers which he deems valid from those which he rejects, endorsing on the latter the word 'Rejected' and the ground of rejection;
- (b) Count, or cause to be counted, the votes given to each candidate and declare the candidate, or candidates, with the largest number of votes to be elected;
- (c) upon the completion of the counting, prepare and certify a return setting forth—
  - (i) the number of valid votes given for each candidate;
  - (ii) the number of votes declared invalid and rejected;
  - (iii) the names of the persons declared elected,
- (d) permit any candidate or his agent to take a copy of, or an extract from, the return;
- (e) seal up in separate packets the counted and rejected ballot papers, and record on each such packet a description of its contents and the name of the constituency and the date of the election to which it refers.

8. The Local Government shall appoint and notify, in such manner as it thinks fit, the date referred to in Regulation 1 for sending ballot papers to electors, and the date referred to in Regulation 2 for the attestation of ballot papers.

## C

## PROPORTIONAL REPRESENTATION

Rule XV, sub-rule (2) :—

Notwithstanding anything in these rules, if a resolution in favour of the introduction of proportional representation is passed by the Council, after not less than one month's notice has been given of an intention to move such a resolution, the Local Government may for any plural-member constituencies introduce the method of election by means of the single transferable vote, and may make all necessary regulations for the purpose and to that end may group together single-member constituencies so as to make new plural-member constituencies.

In the exercise of the foregoing power regulations may be made as to elections generally or any class of elections or in regard to constituencies generally or any class of constituency or any particular constituency.

The Representation of the People Act, 1918 (8 Geo. IV c. 64), thus defines proportional representation in section 41 (6).

'The expression "transferable vote" means a vote—

- (a) capable of being given so as to indicate the voter's preference for the candidates in order; and
- (b) capable of being transferred to the next choice when the vote is not required to give a prior choice the necessary quota of votes, or when, owing to the deficiency in the number of the votes given for a prior choice, that choice is eliminated from the list of candidates.

The method of voting is somewhat involved. The rules are given in Schedule VIII to the Representation of the People Order, known as the University Elections (single transferable vote) Regulations, 1918. The following extracts give an indication of the procedure :—

2. (1) Every elector shall have one vote only.

(2) An elector in giving his vote—

- (a) must place on his voting paper the figure 1 in the square opposite the name of the candidate for whom he votes;
- (b) may in addition place on his voting paper the figure 2, or the figures 2 and 3, and so on in the squares opposite the names of other candidates in the order of his preference.

5. The returning officer shall arrange the voting papers (other than invalid voting papers) in parcels according to the first preferences recorded for each candidate.

In the case of a combined University constituency the returning officer shall before so doing mix together the whole of the voting papers received from the various constituent universities.

6. The returning officer shall then count the number of papers in each parcel, and credit each candidate with one vote in respect of each valid paper on which a first preference has been recorded for him, and he shall ascertain the total number of valid papers.

7. The returning officer shall then divide the total number of valid papers by a number exceeding by one the number of vacancies to be filled, and the result increased by one, disregarding any fractional remainder, shall be the number of votes sufficient to secure the return of a candidate (hereinafter called the 'quota').

8. If at any time the number of votes credited to a candidate is equal to or greater than the quota, that candidate shall be elected.

9. If at any time the number of votes credited to a candidate is greater than the quota, the surplus shall be transferred in accordance with the provisions of this regulation to the continuing candidates indicated on the voting papers in the parcel of the elected candidate as being next in order of the voters' preference.

10. (1) If at any time no candidate has a surplus (or when under the preceding regulation any existing surplus need not be transferred), and one or more vacancies remain unfilled, the returning officer shall exclude from the poll the candidate credited with the lowest number of votes, and arrange the transferable papers in sub-parcels according to the next preferences recorded thereon for continuing candidates, and shall transfer each sub-parcel to the candidate for whom that preference is recorded.

The returning officer shall make a separate sub-parcel of the non-transferable papers.

(2) If the total of the votes of the two or more candidates lowest on the poll, together with any surplus votes not transferred, is less than the votes credited to the next highest candidate, the returning officer may in one operation exclude those candidates from the poll and transfer their votes in accordance with the preceding regulation.

12. (1) When the number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidates shall be elected.

(2) When only one vacancy remains unfilled, and the votes of some one continuing candidate exceed the total of all the votes of the other continuing candidates, together with any surplus not transferred, that candidate shall be elected.

(3) When the last vacancies can be filled under this regulation, no further transfer of votes need be made.

#### *Definitions.*

(1) The expression 'continuing candidate' means any candidate not elected and not excluded from the poll:

(2) The expression 'first preference' means the figure '1'; the expression 'second preference' means the figure '2'; and the expression 'third preference' means the figure '3' set opposite the name of any candidate, and so on:

(3) The expression 'transferable paper' means a voting paper on which a second or subsequent preference is recorded for a continuing candidate.

## D

### INSTRUCTIONS TO PRESIDING OFFICERS AND POLL CLERKS

It may be convenient to recapitulate in codified form the duties of a presiding officer and his assistants as detailed in the regulations and executive instructions. The election agent should see that his sub-agents and polling or 'personation' agents also understand them, so that they may call the attention of the presiding officer to any departure from the lawful procedure. The following are based on instructions issued in England, *mutatis mutandis*.

#### *Attendance at Polling Station.*

The presiding officer and polling clerks must be at the *Polling Station* half an hour before the poll opens.

They should at once see that the table, the ballot box and voting compartments are arranged in the most suitable positions for taking the votes. Special attention should be paid to the arrangements for ingress and egress, and to the posting of police constables to control the traffic and to ensure the convenience of the voters. As the poll will be open throughout the day, the Superintendent of Police should be asked to arrange for such relief as may be necessary.

The presiding officer should impress on all present the need for secrecy, and read the provisions of section 14 of Part II of the Indian Elections Offences and Inquiries Act, 1920. Polling agents must produce their appointments to the presiding officer.

The presiding officer and clerks should observe strict neutrality throughout the election and party colours should not be worn by any one on duty at the polling station.

#### *Contents of Ballot Box.*

The presiding officer will have received the ballot box (or in the Central Provinces and the province of Bihar and Orissa the coloured ballot boxes) previously to the poll and given a receipt for the same. The ballot box should contain the—

ballot papers :

tendered ballot papers (on coloured paper) ;

stamping instrument (the official mark) ;

the register, that is, a copy of so much of the register of electors as contains the names of the voters allotted to vote at the polling station ;

sealing wax and seal :

pencils ; and

any necessary notices, forms and stationery.

The presiding officer should immediately arrange the contents of the ballot box in convenient positions, so that they may be readily available throughout the poll.

The presiding officer and clerks should see, before the poll opens, that—

(1) A notice of the numbers of the electors allotted to poll at the station and a copy of the directions for the guidance of voters in voting are posted outside the station. The notice as to the numbers should be posted up in the most conspicuous place.

(2) When and where necessary the notices showing ' Way In ' and ' Way Out ' are posted up in good positions.

(3) A copy of the directions for the guidance of voters in voting is posted in every voting compartment, and that the copy is kept posted during the polling hours.

(4) Nothing except directions referred to in (3) is printed or written on or inside the voting compartment.

(5) A pencil for marking the ballot papers is attached by a piece of string to each voting compartment. Care should be taken to see that the pencils are *kept sufficiently pointed for use* during the polling hours, and

(6) (In Central Provinces and Bihar and Orissa only.) That the coloured ballot boxes are placed in a compartment screened from observation.

Just before the opening of the poll the presiding officer should show the ballot box or boxes empty to such persons (if any) as may be present, and then lock them up and seal them (the seal should, if possible, be provided by the presiding officer) so as to prevent any box being opened without breaking the seal, and keep them so locked and sealed. A ballot box, once sealed, must on no account be again opened.

No ballot box, during the poll, may be taken out of the polling station for any purpose whatever.

#### *General Powers and Duties of Presiding Officers.*

The presiding officer may delegate to his clerk any of his powers, except that of ordering the arrest, exclusion, or ejection from the polling station of any person. The police constables at any polling station are under the control and direction of the presiding officer.

If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near



that station, or any other person authorized *in writing* by the returning officer to remove him ; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

But these powers are not to be exercised so as to prevent any elector who may be otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

#### *Opening of Poll.*

The poll must commence *precisely* at the time specified. If the polling clerks happen not to be present at the opening of the poll, the presiding officer must, nevertheless, proceed with the election, and vice versa. If there is no public clock within view of the polling station the presiding officer should show his watch to the polling agents who should be advised to set theirs in coincidence with his.

The polling clerk best acquainted with the district should take charge of the register and be seated nearest the entrance to the polling station ; the other clerk should take charge of the ballot papers ; and the presiding officer should take charge of the stamping instrument. Where only one poll clerk is appointed he should, if well acquainted with the district, take charge of the register. In large polling centres, where the number of electors is likely to be large, more clerks may be necessary and possibly two or more stamping instruments, a clerk being deputed for the duty of stamping.

#### *Persons entitled to be in Station.*

The only persons entitled to attend at the polling station longer than necessary for the purpose of voting are the presiding officer and clerks, the personation agents of the candidates (hereinafter referred to as the polling agents)—of whose appointment notice has been given to the returning officer—the candidates themselves and the constables on duty. Only one personation agent for each candidate, authorized in writing by the returning officer, should be allowed to remain in the polling station. The presiding officer should exclude all other persons.

#### *Delivery of Ballot Paper.*

When the voter comes up to vote, the clerk in charge of the register will ascertain his name and address, and having found it on the register he will call out the number, name, and description of the voter as it appears in the register and will then place against the number of the voter in the register a short horizontal line, thus ——— to denote that the voter has received a ballot paper, but without showing the particular ballot paper issued to the voter.

Frequently the voter on applying for a ballot paper will give his number on the register only. *In all cases, however, the surname, with other name or names, and address should be carefully verified.*

As soon as the number is called out the clerk in charge of the ballot papers (or the presiding officer where there is only one poll clerk) will enter the voter's number and the name or distinctive number of the polling district on the counterfoil of the ballot paper. This distinguishing number must be entered on the counterfoil in addition to the electoral number. He will then detach the ballot paper from the counterfoil and stamp the ballot paper with the official mark ; this should be impressed on the top of the left-hand side of the paper so as to be visible on both sides of the ballot paper, and so as not to interfere with the space on the right-hand side left for the voter's mark. Having first folded it in half and again opened it, the presiding officer will deliver the ballot paper to the voter.

*It is most important that the presiding officer should see that in addition to the number of the elector marked on the counterfoil on the ballot paper is included the distinctive number or name of the polling district.*

If the official instrument shall get out of order, and no other instrument is available, the returning officer should if possible be immediately informed. Pending his instructions a temporary mark should be made on each ballot paper issued, either with a knife or pin or other instrument, which gives an impression on both sides of the ballot paper. A note of the difficulty might with advantage be made of the first and last ballot paper so dealt with, and handed to the returning officer at the close of the poll.

Care must be taken that one ballot paper only is given to each voter and that no mark of any kind, except the official mark, is put upon the ballot paper by the presiding officer, or his clerk, or upon the counterfoil except the number on the register and the name or number of the polling district.

No ballot paper is to be given to any person whose name is not on the register of voters allotted to the polling station, except a police constable, or person in the employment of the returning officer as hereinafter mentioned. *The register is conclusive as to the right of the person entered therein to vote.* A ballot paper must, however, not be refused on account of any mere misnomer or inaccurate description in the register if the presiding officer is satisfied of the identity of the person applying to vote with the person whose name appears on the register.

Voting cards or other electoral advertisements left behind by electors should be immediately destroyed.

#### *Voting.*

It is the duty of the presiding officer to see that secrecy of voting is strictly maintained, to prevent unauthorized persons from entering the station, to direct the constables on duty to admit only a limited number of voters at any one time, and to see that each voter votes secretly and without undue delay, and leaves the station immediately after giving his vote.

The voter, having received his ballot paper, must proceed at once to one of the voting compartments; there secretly place on the ballot paper a X on the right-hand side opposite the name of the candidate or candidates for whom he votes, fold up the ballot paper so as to conceal the mark or marks which he has made, but so as to leave the official mark visible on the back, and take it so folded (without showing the front of the paper to any person) to the presiding officer himself, or in his absence to one of the poll clerks; show him the official mark on the back, and place the ballot paper in the ballot box provided for its reception.

#### *(In the Central Provinces and Bihar and Orissa.)*

The voter, having received his ballot paper, must proceed *at once* to the voting compartment in which the coloured ballot boxes have been placed, showing to the person deputed by the presiding officer for the purpose the official mark and place the ballot paper in the box bearing the colour of the candidate for whom he wishes to vote. The officer in charge of the compartment may, if requested by the voter, show him which of the boxes is designated for any candidate. When polling is in progress for two or more constituencies at the same time (for example for the Provincial Legislative Council and for the Legislative Assembly), the presiding officer should take such precautions as may be necessary to prevent ballot papers being placed in the wrong box.

The presiding officer must take care that no person interferes, or attempts to interfere, with the voter whilst marking his vote, or induces a voter to show his ballot paper after he has marked the same, or attempts to obtain in or near the polling station information as to the candidate for whom any voter is about to vote or has voted, or as to the number on the back of the ballot paper given, or puts into the ballot box any paper which has not the official mark on the back, or takes a ballot paper out of the station, or communicates information as to persons who have or have not voted. If any person attempts to put into the

ballot box any ballot paper which has not been officially handed to him by the presiding officer or his poll clerk, or to take any ballot paper out of the station, or to interfere with or intimidate a voter the presiding officer (but not a clerk) should order him to be arrested, or, at all events, removed.

The necessary action can be taken under section 57 of the Code of Criminal Procedure.

Where there are two or more polling stations in the same building care should be taken to see that the voter deposits the ballot paper in the proper ballot box and not in the box of an adjoining station.

Polling agents wishing to leave the polling station during the poll should leave their marked copy of the register with the presiding officer until they return.

In case of confusion arising from a rush of people into the polling station, the presiding officer may, if he thinks fit, order the polling station to be cleared and order restored before proceeding with the poll.

#### *Spoilt Ballot Papers.*

If a voter inadvertently deals with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper, or by mistake marks the ballot paper wrongly, he may, on delivering it up and proving the fact of such inadvertence to the satisfaction of the presiding officer or his poll clerk, obtain another ballot paper, and the spoilt ballot paper must be immediately marked 'Cancelled', but must not be destroyed or put in the ballot box, but put aside to be dealt with at the close of the poll.

#### *Voting by Constables.*

In case a constable applies to vote whose name is not on the register, and produces the necessary certificate, stating the name of the constable, his number in the police force, his number and description on the register of voters, and the fact that he is sent or employed in the discharge of his duty so as to prevent him voting at the polling station at which he would otherwise be by law entitled to vote, the presiding officer must allow him to vote and forthwith mark the certificate 'Cancelled'. The number to be entered on the counterfoil of the ballot paper will, of course, be the constable's number on the register of voters and the name or distinctive number of his polling district. The certificates must be retained and dealt with at the close of the poll as directed below.

#### *Voting by Persons in the Employment of the Returning Officer or Candidate.*

In case an elector in the employment of the returning officer or candidate but whose name is not on the register, applies to vote and produces a certificate signed by a returning officer authorizing the elector to vote at the polling station, the presiding officer must allow him to vote and mark the certificate 'Cancelled'. These certificates should be retained and dealt with at the close of the poll as directed below. The number to be entered on the counterfoil of the ballot paper will, of course, be the elector's number on the register of voters and the distinctive number of his polling district.

#### *Voters unable to Read.*

In case the voter does not know the name of the candidate for whom he wishes to vote, the presiding officer should read the names of the candidates in the order in which they appear in the ballot paper, and at each name ask the voter if he wishes to vote for such candidate, marking the ballot paper accordingly. If the voter presents a card upon which the names of the candidates are printed, with a cross placed against one name, and the voter requests the presiding officer to mark the ballot paper in the same manner, it is suggested that the presiding officer should act accordingly.

*Voter Blind or Incapacitated, etc.*

If a voter is incapacitated by blindness or other physical cause from marking his vote, or (if the poll be taken on a Saturday) any voter declares that he is of the Jewish persuasion and objects on religious grounds to mark his vote, the presiding officer or poll clerk will, at his request, mark his ballot paper for him in the presence of the polling agents, and put it in the ballot box.

*Secrecy in Marking Ballot Papers.*

The presiding officer or poll clerk must in the cases in which the ballot paper is marked by him or by his clerk take all steps possible to secure secrecy: in order to prevent any person other than himself, the poll clerk (if marked by the poll clerk), and the polling agents, in the case of a blind voter, becoming aware of the vote marked upon the ballot paper.

*Number of Votes allowed at a General Election.*

An elector cannot vote in more than one general constituency.

A person voting at a general election for more constituencies than he is entitled to, or asking for a ballot paper for the purpose, will be guilty of a corrupt practice. Vide section 171-D of Chapter IX-A of the Indian Penal Code.

*Question to Voters.*

No inquiry is to be admitted as to the right of any person to vote except that the presiding officer or his clerk, may, of his own accord, and shall, if so required by the candidate or his polling agent, put to the person either or both of the following questions. These questions may be asked at the time of the elector applying for a ballot paper, *but not afterwards* :—

(a) Are you the person enrolled as voter (reading the whole entry from the roll) ?

(b) Have you already voted at the present election ?

The questions must be put in the very words prescribed and the voting paper of the person required to answer either of these questions should not be given to him until he has answered.

The presiding officer should take care that the questions are calmly and deliberately proposed in the exact words on the form provided, and that a voter in replying is protected from interruption or interference.

The first question is as to the identity of *the person* and not as to the identity of *the name*. The inquiry is not whether the voter's name is A. B., but whether he is the person whose name appears as A. B. on the register. The person actually registered may therefore safely answer the question in the affirmative although his name is incorrectly stated in the register, or even if it be a totally different name to the real name of the voter, provided it was intended to designate him and no other person.

The second question is to prove that the elector has not already voted in the constituency.

Upon such questions being satisfactorily answered, the ballot paper must be delivered to the voter, and, when marked by him, allowed to be placed in the ballot box. The presiding officer must not refuse a ballot paper even though he may believe that the voter has answered falsely, or committed perjury.

If a voter who has been refused a ballot paper for not answering the questions satisfactorily, subsequently tenders himself, and offers to answer the questions, he should, after satisfactorily answering them, be allowed to vote.

*Personation.*

If at the time any person applies for a ballot paper, or after he has voted and before he leaves the polling station, any polling agent shall declare to the presiding

officer that he verily believes and undertakes to prove that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, it is the duty of the presiding officer after such person shall have voted, by word of mouth to order any constable or other peace officer to take the person so voting into this custody, which order shall be a sufficient warrant and authority to the said constable or peace officer for so doing. This duty must be performed by the presiding officer himself and cannot be delegated to a poll clerk. The regulation does not authorize the presiding officer to reject the vote of such person if he persists in voting and answers satisfactorily the statutory questions.

Where a person applies for a ballot paper *in his own name*, after having already voted once at the same election and the presiding officer believes he is guilty of personation, the presiding officer (not the polling clerk) may order the person to be arrested and kept in custody until he can be brought before a magistrate.

A voter does not commit the offence of personation if he applies for a ballot paper in a name which is not his own name, but which is the name under which he is registered, and was intended to designate him and no other person, nor if he applies for a ballot paper honestly believing that he is entitled to vote.

The offence of personation is complete when the ballot paper is applied for.

#### *Lunatics, Drunkards, and Deaf and Dumb Persons.*

If a person appears to understand the purpose for which he has come to the polling station, he is entitled to vote. If a polling agent requires the questions to be put (in the case of a deaf and dumb person the questions may be written out), the voter must to the satisfaction of the presiding officer answer such questions, in which case the voter is entitled to receive a ballot paper.

A person so drunk as not to be able to answer the questions would not be entitled to receive a ballot paper.

#### *Tendered Ballot Papers.*

If a person representing himself to be a particular elector named on the register applies for a ballot paper after another person has voted as such elector, the presiding officer or poll clerk must, without being required to do so by the candidate or polling agent, put to the applicant the two questions (see above). If such questions are satisfactorily answered, the presiding officer or poll clerk will hand to the applicant a 'tendered ballot paper' (on coloured paper) which paper the applicant will be entitled to mark in the same manner as any other voter. If the applicant declines to answer the questions the presiding officer must not deliver to him a 'tendered ballot paper'. A 'tendered ballot paper' must be marked with the official mark before being delivered to a voter in the same way as an ordinary ballot paper. The 'tendered ballot paper' marked by the voter, instead of being put into the ballot box, must be handed to the presiding officer or poll clerk, *and endorsed by him or the poll clerk with the name of the voter and his number on the register and name or number of polling district*, and set aside in a separate envelope; and the name, electoral number and number of polling district of the voter must be entered on the 'tendered votes list'.

#### *Riot and Adjournment of Poll.*

In case the proceedings of the poll are interrupted or obstructed by any riot or open violence, the presiding officer must instead of finally closing the poll, adjourn it to the following day, and forthwith give notice of the adjournment to the returning officer.

#### *Close of the Poll.*

*No ballot paper shall be given to any voter after the hour fixed by the local Government for the closing of the poll*, but voters who have received ballot papers before

that hour must mark and deposit them in the ballot box as quickly as possible. The station should then be cleared of all persons except the poll clerks, polling agents, and constables retained on duty.

Subject to the above the presiding officer, at the close of the poll, will close the aperture on the top of the ballot boxes, and seal them, *taking care that none of the hot wax gets into the ballot box.*

The presiding officer will then fill up 'the ballot paper account', and in the presence of the polling agents, if in attendance, make up into separate packets, sealed with his own seal, the undermentioned papers, lists, &c. If any of the polling agents also desire to affix their seals to packets numbered 1 to 5 they may do so.

1. The ballot boxes unopened, but with the keys attached.
2. The unused (white and coloured) and spoilt ballot papers placed together.

*Note.—For the purpose of making up the unused ballot papers and the counterfoils of the used ballot papers into separate packets (see Nos. 2 and 4), it will be necessary to cut through the back of any partly used book of ballot papers so as to separate the counterfoils of the used ballot papers from the unused ballot papers and counterfoils.*

3. The used tendered ballot papers.

4. (a) The marked copy of the register; (b) the counterfoils of the used ballot papers, and of the used tendered ballot paper; and (c) the returning officer's certificates relating to constables and the persons in employment who voted at the station.

The register should be sealed up in one envelope, and the counterfoils of the ballot papers and the certificates in another. The two envelopes should then be placed together in one packet, which should also be sealed.

5. (a) The tendered votes list; (b) the list of votes marked by the presiding officer; (c) the statement of the number of votes marked by the presiding officer.

6. The ballot paper account.

This account must be handed separately to the returning officer or his assistant.

The presiding officer should see that all forms and documents requiring his signature are duly filled up and signed, and particularly that the endorsements on the various envelopes are filled up.

No envelope must be omitted or returned empty, but the appropriate forms must be filled up with 'Nil' returns wherever necessary.

Care should be taken to see that the forms exactly correspond with the endorsements on the envelopes in which they are placed.

7. The stamping instrument and all unused forms and stationery supplied (except ink). *The cost of these articles will be charged to the presiding officer if not duly returned.*

The above should be made into three separate parcels:—

- (a) The numbered envelopes, except the ballot paper account. (That is packets numbered 2, 3, 4, 5 and 7 above.)
- (b) The ballot paper account (packet numbered 6 above).
- (c) The box of stationery, &c.

The presiding officer will also, if any person has been given into custody at his station, make out a statement and enclose it in an envelope, endorsed and sealed by him, specifying (a) the name and description of the person arrested; (b) the offence with which the person is charged; (c) the name of the officer by whom the person was charged, and whether such officer is the presiding officer, a poll clerk, polling agent, or constable; (d) the grounds on which the charge is made; (e) and any other remarks the presiding officer may desire to offer.

#### *Delivery of Ballot Box and Packets.*

The presiding officer will then take the ballot box and the three separate packets and deliver the same to the returning officer or his assistant at the appointed place for receiving them.

## E

## INSTRUCTIONS TO COUNTING ASSISTANTS

The following method is described in Parker's *Election Agent and Returning Officer* as being 'the most expeditious and at the same time the simplest' way of recording ballot papers and counting votes.

The case given is that of five candidates for two vacancies, and the first-named heaps are the combinations which are expected to be the most frequent. A, B, and C are supposed to be of one side in politics: D and E of the other. This arrangement must of course be altered to suit different circumstances. Where there are only two or more candidates for one vacancy the counting is simpler once the accuracy of the number of ballot papers is established as corresponding with the counterfoils.

## RECORDING THE BALLOT PAPERS

*Instructions to Counting Assistants.*

1. Sit in couples with an empty chair between you.
2. On receiving the ballot box place the box on the chair between you.
3. Break the seal (or covering) over the key-hole, unlock and open the ballot box, and take out, open, and count the ballot papers. Keep the ballot papers with their faces upwards. The numbers on the backs must not be inspected. Count the ballot papers in heaps of twenties, and range these heaps in rows of five each. Leave the ballot papers so counted and arranged on the table.
4. Record the total number of ballot papers in the box and sign it. Raise your hand as a signal to the messenger, who will take the result of your labours for comparison with the ballot paper account.
5. If found correct, the messenger will return and take the ballot papers from you, and will give you another box, which proceed to deal with in like manner.
6. If found incorrect, the messenger will bring back your return and you will then recount the ballot papers, and correct it if necessary. If on a recount the number previously recorded is verified, a note to that effect must be added and signed. Then raise your hand for the messenger, who will then take the form and subsequently the ballot papers from you.

## COUNTING THE VOTES

7. On receiving from the messenger a number of ballot papers, count them and record the number.
8. Sort the ballot papers into (six) heaps, arranged as follow:—

1	2	3	4	5	6
A & B.	B & C.	A & C.	D & E.	Single vote and ballot papers not included in the above combinations.	Doubtful votes.

9. The doubtful votes are—

- (1) Those without the official mark.
- (2) Marked for more than (two) candidates.
- (3) Containing any writing or mark other than the (two) crosses.
- (4) Unmarked, or so marked that you cannot tell for whom the votes are given.
- (5) Objected to by any of the candidates' agents.

10. Place the four heaps crosswise on the top of each other in the top left-hand corner of the table; heap No. 1 at the bottom, No. 2 crosswise upon it, and so with Nos. 3 and 4. Then:—

11. Take heap No. 5 and sort it into seven other heaps in the following order:—

1	2	3	4	5	6	7
A & D.	A & E.	B & D.	B & E.	C & D.	C & E.	Single votes.

12. Place the first six of these heaps crosswise on the top of each other as before.

13. Take heap No. 7 (the single votes) and sort it into five different heaps, thus:—

1	2	3	4	5
A	B	C	D	E

14. Count the number of single votes for each candidate and record them separately.

15. Count and record the cross votes and the party combinations in like manner. (In counting the large heaps, count them in heaps of twenty each, and place these heaps in rows of five heaps in each row.)

16. The candidates' counting agents are not to interfere with your duties, but you are to allow them to inspect any ballot paper they may desire to see, but not the numbers on the backs.

17. You are not to leave the table, except in a case of urgent necessity, and your companion must not proceed in your absence.

C.

County (or borough or division) of  
Parliamentary Election,

, 19 .

No.

Statement of number of Ballot Papers received and counted, and of number of Votes therein given for each Candidate.

	A	B	C	D	E	Doubtful votes.
A . . .						
B . . .						
C . . .						
D . . .						
E . . .						
A and B .						
A and C .						
A and D .						
A and E .						
B and C .						
B and D .						
B and E .						
C and D .						
C and E .						
D and E .						
Total .						

Table No.

Number of ballot papers received.

(Signed).

Counting Assistants.

Another method is to separate the votes, place them on files or in clips, and then count them.



## APPENDIX III

### WOODWARD v. SARSONS

*In 1876 a Select Committee appointed by the House of Commons 'to enquire into the working of the existing machinery of Parliamentary and Municipal Elections' unanimously recommended that the Home Office should forward to every Returning Officer the case and judgment in Woodward v. Sarsons.*

*Note.*—Rule 24 under the Ballot Act, 1872, requires that 'immediately before a ballot paper is delivered to an elector it shall be marked on both sides with the official mark, either stamped or perforated'. The Indian regulations 16 and 31 (a) contemplate a mark only on the back of the ballot paper.

Lord Coleridge, C. J.—In this case a petition had been presented praying that the election of the respondent, Mr. Sarsons, to the office of town councillor should be declared void, and a case was stated for the opinion of the court. At the election the petitioner Woodward and the respondent Sarsons were the candidates, and the respondent Sadler was the alderman of the ward and returning officer. The returning officer appointed one Smith to be his presiding officer at polling station No. 130. Upon the electors applying for a ballot paper at such station, the presiding officer marked upon the face of the ballot paper given to each of them the number of the voter appearing on the burgess roll. This he did to every ballot paper handed out by him. The number of ballot papers so marked and given out by him was 294, of which 234 were given in favour of the petitioner Woodward and 60 in favour of the respondent Sarsons. The burgess roll numbers so marked were, in fact, not seen so as to be identified, but they could have been seen by the persons present at the counting of the ballot papers. At polling station No. 125 about 20 ballot papers were marked by the presiding officer by the direction of voters who were unable to read. Each of such ballot papers was placed by the presiding officer in the ballot box wrapped up in the declaration of inability to read, made by the voter for whom such vote was marked. Each of the votes so given and so marked by the presiding officer could have been, but was not in fact, identified by the returning officer at the counting of the votes by comparing the ballot papers with the declarations of inability in which they were wrapped. Twenty-two ballot papers, which had been counted as valid, were, on inspection after the presentation of the petition, found to be marked in a manner to which objection was now taken. It was contended that they ought all to have been rejected. The returning officer declared at the election the numbers of votes thus :

For Sarsons . . . . .	965
For Woodward . . . . .	775
	<hr/>
Majority for Sarsons . . . . .	190

and thereupon he declared Sarsons, the respondent, to be duly elected.

The petition, without praying for a scrutiny, prayed that it might be determined that the said H. Sarsons was not duly elected, and that the election was void.

Upon these facts it was argued, on behalf of the petitioner, that the election was void, because it had not been conducted in accordance with the Ballot Act ;

that it was void on that account according to the common law of Parliament, because the deviation from the Act was so great that the election could not be said to be an election by ballot; that it was void under the Ballot Act itself according to section 13, because it had not been conducted according to the rules in the schedules, nor in accordance with the principles laid down in the body of the Act, and the non-compliance with the principles of the Act had affected the result of the election. And as to the last allegation, it was said that the petitioner was not bound, in order to prove it, to show that on a scrutiny the respondent would be in a minority, but it was enough if he could show that so large a body of electors as those who did vote or who might have voted at the polling station No. 130 were or might have been virtually disfranchised.

On behalf of the respondents it was urged that the admitted error of the presiding officer at the polling station No. 130 was not of sufficient importance to avoid the election at common law, because the election was, notwithstanding such error, substantially conducted as an election by ballot; that in this case it could be demonstrated that the mistake relied on had not affected the result of the election; that a breach of the Ballot Act, however extensive, cannot as such avoid an election, for there is no enactment in the Act to that effect; that no such enactment is contained in section 13; that it is an enactment to save certain elections, and not to invalidate any; that it is an enactment of extreme caution stating as law that which was equally the law before. Arguments were then gone into as to the alleged validity and invalidity of different classes of votes which had been counted. This was not done as by way of scrutiny, but in order to determine whether the alleged mistakes had or had not affected the result of the election.

The questions raised for decision seem to be, first, what is the true statement of the rule under which an election may be avoided by the common law of Parliament? secondly, is the present case brought within the rule? thirdly, whether a breach of the Ballot Act can as such be a ground for avoiding an election? fourthly, if yes; can this election be thereby avoided?

As to the first, we are of opinion that the true statement is that an election is to be declared void by the common law applicable to Parliamentary elections if it was so conducted that the tribunal which is asked to avoid it is satisfied, as a matter of fact, either that there was no real electing at all, or that the election was not really conducted under the subsisting election laws. As to the first, the tribunal should be so satisfied, i. e. that there was no real electing by the constituency at all, if it were proved to its satisfaction that the constituency had not in fact had a fair and free opportunity of electing the candidate which the majority might prefer. This would certainly be so, if a majority of the electors were proved to have been prevented from recording their votes effectively according to their own preference, by general corruption or general intimidation, or by being prevented from voting by want of the machinery necessary for so voting, as by polling stations being demolished or not opened, or by other of the means of voting according to law not being supplied, or supplied with such errors as to render the voting, by means of them, void or by fraudulent counting of votes or false declaration of numbers by a returning officer, or by other such acts or mishaps. And we think that the same result should follow if, by reason of any such or similar mishaps, the tribunal, without being able to say that a majority had been prevented, should be satisfied that there was reasonable ground to believe that a majority of the electors may have been prevented from electing the candidate they preferred. But if the tribunal should only be satisfied that certain of such mishaps had occurred, but should not be satisfied either that a majority had been, or that there was reasonable ground to believe that a majority might have been, prevented from electing the candidate they preferred, then we think that the existence of such mishaps would not entitle the tribunal

to declare the election void by the common law of Parliament. This, we think, is the result of comparing the judgments of Grove, J., at Hackney and Dudley with the judgments of Martin, B., at Salford, and of Mellor, J., at Bolton, all which judgments are in accordance with, but express more accurately the grounds of, the decisions in Parliament in the older cases of the Norfolk, Morpeth, Pontefract, Coventry, New Ross, and Drogheda, all which are mentioned in *Rogers on Elections*, 11th Ed., pp. 392, 393. As to the second, i. e. that the election was not really conducted under the subsisting election laws at all, though there was an election in the sense of there having been an election by the will of the constituency, we think that the question must in like manner be whether the departure from the prescribed method of election is so great that the tribunal is satisfied as matter of fact that the election was not an election under the existing laws. It is not enough to say that great mistakes were made in carrying out the election under those laws; it is necessary to be able to say that either wilfully or erroneously the election was not carried out under those laws, but under some other method. For instance, if, during the time of the old laws, with the consent of a whole constituency, a candidate had been selected by tossing up a coin, or by the result of a horse race, it might well have been said that the electors had exercised their free will, but it should have been held that they had exercised it under a law of their own invention, and not under the existing election laws, which prescribed an election by voting. So now, where the election is to be an election by ballot, if either wilfully or erroneously a whole constituency were to vote, but not by ballot at all, the election would be a free exercise of their will, but it would not be an election by ballot, and therefore not an election under the existing election law. But, if, in the opinion of the tribunal, the election was substantially an election by ballot, then no mistakes or misconduct, however great, in the use of the machinery of the Ballot Act, could justify the tribunal in declaring the election void by the common law of Parliament. We agree upon this point with the answer attributed to Martin, B., before a Committee of the House of Commons, with his decision at Salford, and with the decisions of Mellor, J., at Bolton, and of Berry, J., at Drogheda.

If the rule be thus stated, then the next question is, whether we can say, upon the facts stated in the present case, that a majority of the electors have been, or that there is reasonable ground to believe that a majority may have been, by misconduct or error of the presiding officers, prevented from recording their votes with effect. Now there is no evidence, as it seems to us, that any elector was prevented from recording his vote, or induced not to record it, by what occurred. All who went to vote at the polling station No. 130 did vote. It was argued that a report of the error being then perpetrated might have prevented others from going to vote, but this was answered by showing that the court finds that no one noticed the error until after the election was over.

The result is that all the electors who desired to vote did vote; and as to the votes which were given, and which are objected to, it is now known (except as to the twenty) for whom each of them was in fact given. In this case, therefore, where the objections to the particular votes have been determined, the effect of the mistakes on the result of the election will be exactly known. If so, there is no room for speculation or doubt as to whether a majority may or may not have been prevented from voting with effect. Those who did not vote were not prevented by the errors which occurred; it will be seen how the majority of those who did vote was affected by such errors. In this case, therefore, it becomes necessary, not by way of scrutiny, but in order to determine whether the majority has been prevented from voting with effect to determine upon the validity or invalidity of the votes which were given, and to which objection has been taken. In order to determine this part of the case, it is necessary to consider and determine the construction of the Ballot Act. Now, first, the Act is divided

into the principal part which contains certain sections, and two schedules which contain certain rules and forms; and by section 28, 'The schedules and the notes thereto and directions therein shall be construed and have effect as part of this Act'. The rules and forms, therefore, are to be construed as part of the Act, but are spoken of as containing 'directions'. Comparing the sections and the notes thereto it will be seen that, for the most part, if not invariably, the rules point out the mode or manner of doing what the section enacts shall be done. And in Schedule 2, the first note states, 'The forms contained in this schedule or forms as nearly resembling the same as circumstances will admit shall be used.' And in the ballot paper, as given in the schedule, is '*Directions as to printing ballot paper*', and '*Form of directions for the guidance of voters in voting, &c.*'. These observations lead us to the conclusion that the enactments, as to the rules in the first schedule, and the forms in the second are directory enactments as distinguished from the absolute enactments in the sections in the body of the Act. And in such case, in order to determine the preliminary question, which is, whether there has been a material breach of the Act, and which must be determined before determining what effect such breach has upon a vote on the election, the general rule is that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

The 2nd section enacts, as to what the voter shall do, that 'The voter having secretly marked his vote on the paper and folded it up so as to conceal his vote, shall place it in an enclosed box'. This is all that is said in the body of the Act about what the voter shall do with the ballot paper. That which is absolute, therefore, is that the voter shall mark his paper *secretly*. How he shall mark it is in the directory part of the statute. By rule 25, 'The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there *mark his paper*, and fold it up so as to conceal his vote, and shall then put his ballot paper so folded up into the ballot box'. This rule, it will be observed, does not yet say how the paper is to be marked. But in Schedule 2 is given the 'form of ballot paper', and appended to this form is a note, which, by the 28th section, is to be construed and have effect as part of the Act. This note contains the form of directions for the guidance of the voter in voting. 'The voter will go into one of the compartments, and with the pencil provided in the compartment place a cross on the right hand side, opposite the name of each candidate for whom he votes, thus, x.' This is the only enactment throughout the statute as to the manner and form in which the voter is to mark his ballot paper. And therefore, by the general rule before mentioned, it would be necessary that the absolute enactment that the paper should be marked secretly should be obeyed exactly, but it would be sufficient that the manner of marking the paper should be obeyed substantially. If these two enactments be so obeyed, there is no material breach of the Act. The extent of error, which is to vitiate so as to annul the ballot paper, is further to be gathered from the statute itself. By section 2, 'Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything except the said number on the back is written or marked by which the voter can be identified, shall be void, and not counted.' It is not every writing or every mark, besides the number on the back, which is to make the paper void, but only such a writing or mark as is one by which the voter can be identified. So in rule 36, 'The Returning Officer shall report, &c., the number of ballot papers rejected, and not counted by him under the several heads of, first, want of official mark; secondly, voting for more candidates than entitled to; thirdly, writing or mark by which voter could be identified; fourthly, unmarked or void for uncertainty'. And then in Schedule 2 in the note to the form above referred to, we have this warning,

‘ If the voter votes for more than candidates, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.’ The result seems to be, as to writing or mark on the ballot paper, that if there be substantially a want of any mark, or a mark which leaves it uncertain whether the voter intended to vote at all, or for which candidate he intended to vote, or if there be marks indicating that the voter has voted for too many candidates, or a writing or a mark by which the voter can be identified, then the ballot paper is void, and is not to be counted. Or to put the matter affirmatively, the paper must be marked so as to show that the voter intended to vote for some one, and so as to show for which of the candidates he intended to vote. It must not be marked so as to show that he intended to vote for more candidates than he was entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all, or for which candidate he intended to vote, nor so as to make it possible, by seeing the paper itself, or by reference to other available facts to identify the way in which he has voted.

If these requirements are substantially fulfilled, then there is no enactment and no rule of law by which a ballot paper can be treated as void, though the other directions in the statute are not strictly obeyed. If these requirements are not substantially fulfilled, the ballot paper is void, and should not be counted : and if it is counted, it should be struck out on a scrutiny. The decision in each case is upon a point of fact to be decided, first, by the returning officer, and afterwards, by the election tribunal on petition.

Applying these views to the votes in question before us, it is clear that the 294 ballot papers marked by the presiding officer at the polling station No. 130 were void, and ought not to be counted. There was a mark on them by which, on reference to the burgess roll, the way in which the voter had voted could be identified.

As to the 20 ballot papers at the polling station No. 125, there was a breach by the presiding officer of the directions in rule 26, but there was no breach for which by any enactment the ballot papers can be rejected. The votes were given in the way prescribed, but the presiding officer dealt with the declarations erroneously. We are of opinion that those votes were properly counted. As to the ballot papers in Appendix A, No. 638 is clearly void, and must be disallowed. We, with some hesitation, disallow Nos. 844 and 889. There is no cross at all, and we yield to the suggested rule that the writing by the voter of the name of the candidate may give too much facility, by reason of the handwriting, to identify the voter. But we cannot think that the mere fact of two crosses being placed, as in 433 or as in 928, ought to vitiate the ballot paper. There can be no doubt as to the intention to vote, and no doubt as to the intention to vote emphatically for the one candidate. If there were evidence of an arrangement that the voter to indicate that it was he that voted, who had used the ballot paper, then, by reason of such evidence, such double mark would be a mark by which the voter could be identified, and then the paper, upon such proof being made, should be rejected. But the mere fact of there being two such crosses is not, in our judgment, a substantial breach of the statute. Neither is the mere fact of an additional mark such as is found in 926, nor the mere facts of the peculiar form of cross in 1,364 and 641, nor the marks on 1,726, 2,140, 3,562, or 911, though in these cases also, extrinsic evidence of arrangement might make such peculiarities indications of identity. We think that, inasmuch as the ballot paper was handed in by the voter as a vote, the mark on 875 substantially indicated that the voter intended to vote for the candidate against whose name it is placed, and that the paper ought to be allowed. And we think the same reasoning applied to 117, 155, 190, 505, 174, 183, 842, 1,413, in which the cross is placed on the left-hand side of the candidate's name, instead of on the right-hand side. The substance of the direction in the note in Schedule 2 is fulfilled,

which is, in our opinion, that the voter should clearly indicate the candidate for whom he intends to vote. If this be done substantially, and the absolute enactment as to secrecy be observed fully, we think the statute is satisfied. For the same reasons we, in Appendix B, disallow No. 410, but allow all the rest.

We are aware that in so applying the principles which we have deduced from the statute, we are acting apparently in opposition to some of the decisions in *Haswell v. Stewart* (The Wigtown Case), but there may have been evidence in that case which does not exist in the present, and which made many of the marks there marks of identification, which the mere presence of the marks here does not do. If this was not so, we respectfully differ from the strict view taken by the majority of the learned judges who decided that case, and adhere to the view of Lord Benholme given in that case. It follows from our decision as to the different ballot papers, that if the 60 which were given for Sarsons, but properly disallowed at the counting by the returning officer, had not been rendered void by the presiding officer, they would have made the votes for Sarsons 1,025, from which striking three disallowed papers in Appendix A, his numbers would have been 1,022; and adding the 234 for Woodward, but striking off one disallowed in Appendix B, his numbers would have been 1,008. The 20 being properly, in our opinion, allowed, do not affect the result. Inasmuch, however, as no voter was prevented from voting, it follows that the errors of the presiding officers at the polling stations No. 130 and No. 125, did not affect the result of the election, and did not prevent the majority of electors from effectively exercising their votes in favour of the candidate they preferred, and therefore that the election cannot be declared void by the common law applicable to Parliamentary elections.

But then it is urged that there has been a breach of the Ballot Act, and therefore the election is, by virtue of the Act itself, void. This is the third question which was raised in argument before us. It is said section 13, though it is in a negative form, assumes, as an affirmative proposition, that a non-compliance with the rules or any mistake in the use of the forms would render an election invalid, unless it appeared that the election was conducted in accordance with the principles laid down in the body of the Act, and that such non-compliance or mistake did not affect the result of the election. If this proposition be closely examined, it will be found to be equivalent to this, that the non-observance of the rules or forms, which is to render the election invalid, must be so great as to amount to a conducting of the election in a manner contrary to the principle of an election by ballot, and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of votes; or in other words, the result of the election. It, therefore, is, as has been said, 'an enactment *ex abundante cautela*,' declaring that to be the law applicable to elections under the Ballot Act, which would have been the law to be applied, if that section had not existed. It follows that, for the same reasons which prevent us from holding that this election was void at common law, we must hold that it is not void under the statute.

As between the petitioner and the respondent Sarsons, we therefore hold that this petition must be dismissed with costs.

As between the petitioner and the respondent Sadler, we are of opinion that, inasmuch as there was no personal default by the respondent, and the result of the election was not affected, the petition must be dismissed; each party to bear his own costs.

Petitions dismissed accordingly.

# APPENDIX IV

## ACT NO. XXXIX OF 1920

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL]

(Received the assent of the Governor-General on the 14th September 1920.)

An Act to provide for the punishment of malpractices in connexion with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act.

WHEREAS it is expedient to provide for the punishment of malpractices in connexion with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act; It is hereby enacted as follows :

### PRELIMINARY

- 1.—(1) This Act may be called the Indian Elections Offences and Inquiries Act, 1920; and
- (2) It extends to the whole of British India.

### PART I

#### AMENDMENT OF THE INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE

1.—(1) In Section 21 of the Indian Penal Code, after the tenth entry, the following shall be inserted, namely, '*Eleventh* :—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election'; and after *Explanation 2*, the following shall be added, namely :

'*Explanation 3*.—The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.'

(2) After Chapter IX of the same Code the following Chapter shall be inserted, namely :

#### CHAPTER IX A

*Of offences relating to elections.*

171 A. For the purposes of this Chapter—

(a) 'candidate' means a person who has been nominated as a candidate at any election, and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat; provided that he is subsequently nominated as a candidate at such election;

(b) 'electoral right' means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

171 B.—(1) Whoever—

- (i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right ; or
- (ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery :

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171 C.—(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

- (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or
- (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171 D. Whoever at any election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures, or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

171 E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both :

Provided that bribery by treating shall be punished with fine only.

*Explanation.*—‘Treating’ means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

171 F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

171 G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false, and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.



171 H. Whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or upon any advertisement, circular, or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171 I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connexion with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

3.—(1) In Section 196 of the Code of Criminal Procedure, 1898, after the words ' Chapter VI ' the words ' or IX A ' shall be inserted.

(2) In Schedule II to the same Code after the entries relating to Chapter IX of the Indian Penal Code the following shall be added, namely :

#### CHAPTER IX A.—OFFENCES RELATING TO ELECTIONS

171 E	Bribery . . .	Shall not arrest without warrant	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for one year, or fine, or both, or if treating only, fine only.	Presidency Magistrate or Magistrate of the First Class.
171 F	Undue influence and personation at an election.	do.	do.	do.	do.	Imprisonment of either description for one year, or fine, or both.	do.
171 G	False statement in connexion with an election.	do.	do.	do.	do.	Fine . . . .	do.
171 H	Illegal payments in connexion with elections.	do.	do.	do.	do.	Fine of 500 rupees.	do.
171 I	Failure to keep election accounts.	do.	do.	do.	do.	Fine of 500 rupees.	do.

#### PART II

##### ELECTION INQUIRIES AND OTHER MATTERS

4. In this Part, unless there is anything repugnant in the subject or context,  
(a) ' costs ' means all costs, charges, and expenses of, or incidental to, an inquiry ;

(b) ' election ' means an election to either Chamber of the Indian Legislature or to a Legislative Council constituted under the Government of India Act ;

(c) ' inquiry ' means an inquiry in respect of an election by Commissioners appointed for that purpose by the Governor-General, Governor, or Lieutenant-Governor ;

(d) 'pleader' means any person entitled to appear and plead for another in a Civil Court, and includes an advocate, a vakil, and an attorney of a High Court.

5. Commissioners appointed to hold an inquiry shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters :

- (a) discovery and inspection,
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses,
- (c) compelling the production of documents,
- (d) examining witnesses on oath,
- (e) granting adjournments,
- (f) reception of evidence taken on affidavit, and
- (g) issuing commissions for the examination of witnesses,

and may summon and examine *suo motu* any person whose evidence appears to them to be material ; and shall be deemed to be a Civil Court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898.

*Explanation.*—For the purposes of enforcing the attendance of witnesses, the local limits of the Commissioners' jurisdiction shall be the limits of the Province in which the election was held.

6. The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of this Act, be deemed to apply in all respects to an inquiry.

7. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

8.—(1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in an inquiry upon the ground that the answer to such question will criminate or may tend, directly or indirectly, to criminate him ; or that it will expose, or tend, directly or indirectly, to expose him to a penalty or forfeiture of any kind :

Provided that

- (i) no person who has voted at an election shall be required to state for whom he has voted ; and
- (ii) a witness who, in the opinion of the Commissioners, has answered truly all questions which he has been required by them to answer shall be entitled to receive a certificate of indemnity, and such certificate may be pleaded by such person in any Court and shall be deemed to be a full and complete defence to or upon any charge under Chapter IX A of the Indian Penal Code arising out of the matter to which such certificate relates, nor shall any such answer be admissible in evidence against him in any suit or other proceeding.

(2) Nothing in sub-section (1) shall be deemed to relieve a person receiving a certificate of indemnity from any disqualification in connexion with an election imposed by any law or any rule having the force of law.

9. Any appearance, application, or act before the Commissioners may be made or done by the party in person or by a pleader duly appointed to act on his behalf :

Provided that any such appearance shall, if the Commissioners so direct, be made by the party in person.

10. The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Commissioners to such person, and shall, unless the Commissioners otherwise direct, be deemed to be part of the costs.

11.—(1) Costs shall be in the discretion of the Commissioners, and the Commissioners shall have full power to determine by and to whom and to what extent such costs are to be paid and to include in their report all necessary

recommendations for the purposes aforesaid. The Commissioners may allow interest on costs at a rate not exceeding six per cent. per annum, and such interest shall be added to the costs.

(2) The fees payable by a party in respect of fees of his adversary's pleader shall be such fees as the Commissioners may allow.

12. Any order made by the Governor-General or Governor or Lieutenant-Governor on the report of the Commissioners regarding the costs of the inquiry may be produced before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of a chartered High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

13. Any person who has been convicted of an offence under Section 171 E or 171 F of the Indian Penal Code or has been disqualified from exercising any electoral right, for a period of not less than five years, on account of malpractices in connexion with an election shall be disqualified for five years from the date of such conviction or disqualification from

(a) being appointed to, or acting in, any judicial office ;

(b) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached ;

(c) being elected or sitting or voting as a member of any local authority ; or

(d) being appointed or acting as a trustee of a public trust :

Provided that the Governor-General, in the case of an election to the Council of State or the Legislative Assembly, and the Governor or the Lieutenant-Governor, in the case of an election to his Legislative Council, may exempt any such person from such disqualification.

14.—(1) Every officer, clerk, agent, or other person who performs any duties in connexion with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting, and shall not (except for some purpose authorized by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months or with fine, or with both.

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